

# The Solicitors' Journal

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## CURRENT TOPICS

### Fifty-Fifty

WHEN a judge at first instance dismisses each of two cross-actions arising out of a road accident involving only two vehicles, and a majority of the Court of Appeal, differing from him, concludes that each driver was equally to blame, a first impression might well be that the result of the appeal has left the parties where they stood. If no negligence is proved on either side, is that different in effect from an exactly equal apportionment of the blame? It depends, as our readers will be aware, and as they will sometimes have to explain to their clients, on the incidence of damage. Litigation is not a mathematical exercise, nor in practice is it a method of answering abstract questions of law. A running-down action is an attempt to obtain redress for an injury which bears no necessary proportion to the wrong which causes it. In the case which prompts these reflections (*Shiner v. Webster, The Times*, 27th April) an autocyclist and a motor-cyclist had collided on a straight road in broad daylight, and the evidence of neither was available at the trial. The motor-cyclist had suffered concussion to an extent which rendered him unable to recollect the circumstances; the other had died as a result of the accident. BIRKETT and DENNING, L.JJ., felt justified in holding, on what evidence there was, that there had been equal negligence on both sides. So that instead of the parties to the actions bearing their own losses, as they would under the judgments of FINNEMORE, J., each will presumably contribute one-half of the other's and one-half of his own. All which illustrates that there is more in a decision than meets the casual eye.

### Priority in Moving the Court

To correct any wrong impression that may exist that court proceedings in this country are informal and lacking in dignity, the address by Mr. Justice VAISEY to leading counsel on motion day in his Chancery Court on 29th April can be used as a reference: "Perhaps I might make a remark concerning the seating of silks appearing before me on motion day as I think that there is some confusion about it at the present time. The rule in reality is as plain as can be. The Attorney-General is notionally placed in the middle of the row. The man next in seniority to him should sit on his right. The next man in seniority to him sits on his left, the next men would sit again on his right and on his left and so on." To show that it was not entirely a matter of decorum and ceremonial, his lordship continued: "It was a very convenient practice, because it enabled the judge at once to see who claimed to be entitled to move first instead of having hurriedly to look through the pages of the Law List. The case of ex-Law Officers is a different matter altogether—that is in the judge's discretion; but the arrangement of silks was an ancient practice which should be rehabilitated, I should have thought."

### Coroner's Court Practice

THE latest edition of the well-known Home Office circular to coroners on matters other than deaths from industrial accidents and diseases (No. 68/1955, dated 18th April, 1955)

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is in the form of a new circular replacing all previous circulars. It contains copious references to the Coroners Rules, 1953, the Registration (Births, Still Births, Deaths and Marriages) Consolidated Regulations, 1954, and other recent changes in the law. Among important practical suggestions in the circular is that in which the Home Secretary hopes that in any case where an inquest is to be held as a result of an accident involving an untraced driver the coroner will arrange for notice of the time and place of the inquest to be sent to the Motor Insurers' Bureau, 60 Watling Street, London, E.C.4. The Bureau repays the cost of notification. It was set up by insurance companies in order to secure compensation to third party victims of road accidents where there is no effective insurance. Where the driver cannot be traced, the Bureau is prepared to consider sympathetically the making of *ex gratia* payments. A further consolidated circular, replacing the circulars relating to deaths from industrial accidents and diseases, is to be issued later.

#### Restricted and Conditional Licences for Vehicles

A HACKNEY carriage is taxed at a rate of £10 per annum; a similar vehicle used for private purposes at £12 10s. To carry passengers otherwise than for hire in a vehicle licensed at the hackney carriage rate is therefore to court prosecution for the offence of using it for a purpose which brings it within a class of vehicles for which a higher rate of duty is laid down, contrary to the Vehicles (Excise) Act, 1949. A taxi-driver appearing before Croydon Quarter Sessions recently discovered that this was so even when the non-paying passengers were his wife and son whom he had picked up after he had finished work, and to whom he was giving a lift home. The Recorder said the case was near the borderline. One is reminded of some other lines drawn by the courts as part of the pattern of complicated provisions which adds up to motor licensing law. There is the question whether a trailer drawn by a vehicle constructed or adapted for goods but licensed only for private use is laden or empty. If goods are being carried, whether in the trailer or in the van, there is an offence (*James v. Davies* [1953] 1 Q.B. 8). On the other hand, showing some impatience with the obscurities of the relevant legislation, the Divisional Court refused to hold that the towing of an empty caravan by a goods vehicle attracted the higher rate of duty applicable to goods vehicles with trailers (*Pearson v. Boyes* [1953] 1 W.L.R. 384). Not dissimilarly, the applicability of the speed limit of 30 miles per hour which is a condition of a carrier's "C" licence granted under the Road and Rail Traffic Act, 1933, depends on the actual presence or absence of goods in the vehicle at the time. Whether it is a dual-purpose vehicle such as a shooting brake or just a plain van, *Woolley v. Moore* [1953] 1 Q.B. 43 decides that the conditions of the "C" licence, including the restriction on speed, do not apply to it when it is not being used for the carriage of goods.

#### Adequacy of Insurance

POLICY-HOLDERS are repeatedly exhorted by insurers to see that property covered against loss or damage is not undervalued in the proposal or in the terms of the policy, and one of the minor anxieties of the times is the difficulty of re-assessing replacement costs in an unstable market. (Over-insurance, too, has its hazards unless the underwriters can be induced to agree the values which the insured puts on items covered.) A mis-statement of value can, like any other material misrepresentation in a contract of insurance, affect the validity of the policy by giving the insurers the opportunity of repudiation. The rather peculiar point decided by the Court of Appeal in *West v. National Motor and Accident*

*Insurance Union, Ltd.* [1955] 1 W.L.R. 343; *ante*, p. 235, is to the effect that, when an insurance company becomes entitled to repudiate on the ground of under-valuation, it is the whole policy which they must repudiate, if anything. They cannot accept the policy as good and subsisting, while at the same time refusing to pay a particular claim made in accordance with its provisions. The particular line taken by the defendants in the case is no doubt unusual, but the circumstances are not so by any means. The prudent solicitor will read into the report a warning, which it will be to his clients' advantage to have pressed upon them, of the necessity for taking seriously the business of valuation for insurance, and, even in the case of private householders, of making periodic reviews of the current figures.

#### Child Welfare

THE Peter le Neve Foster lecture delivered by Sir BASIL HENRIQUES on 27th April to the Royal Society of Arts was entitled "The Detection and Prevention of Anti-Social Behaviour in Young Persons." His emphasis on home influences will be emphatically endorsed by all experienced in social and criminal work in court and out of court. On the remedial side Sir Basil had something new and constructive to offer, in the proposed establishment in every town of a Child Welfare Office, presided over by the Children's Officer. The building should house the Probation Officers, the Education Officer and all the other statutory and voluntary organisations dealing with the welfare of children and young persons. The juvenile court, he said, should hold its sessions there, and in close proximity should be the Child Guidance Clinic. Sir Basil gave a tragic example of lack of co-operation between the various agencies, resulting in starvation and neglect of two children for fourteen months in spite of many agencies dealing with the case. He also recommended that the Children's Department of the Home Office should be combined with the Ministry of Education and should also be responsible for the work of the National Youth Employment Council of the Ministry of Labour, and the department of the Ministry of Health dealing with children of school age and under. It would lessen muddle and delay. Cruelty to children, he concluded, is as reprehensible when committed by the State as it is when perpetrated by an individual.

#### The "Law Quarterly"

"A RASH challenge to an array of authority" is how the author, Mr. H. W. R. WADE, describes his article in the April issue of the *Law Quarterly Review* on "An Equitable Mortgagee's Right to Possession." Text-books, he says, declare with one voice that an equitable mortgagee of land has no right to take possession, and recently *HARMAN, J.*, has laid it down that an equitable mortgagee has no right to take possession without an order of the court. Nevertheless he finds this rule contrary to principle, unsupported by other authority than that of *Harman, J.*, contrary to authority and reason, and based on a wrong analogy of actions for foreclosure and sale. Those who wish to go to the Court of Appeal on the point will find abundant material in this article of nineteen pages. Chancery practitioners will find guidance in "Powers in relation to the Rule against Perpetuities," by *A. H. DROOP*, and in "English Equity" by *Dr. H. COING*, and common law practitioners will find a useful subject discussed in "in pari delicto potior est conditio defendentis," by *J. K. GRODECKI*. Among the many useful comments on cases is one by "R. E. M." in "The Deserted Wife's Equity Again" on *Jess B. Woodcock and Sons, Ltd. v. Hobbs* [1955] 1 W.L.R. 152; *ante*, p. 129.

***A Conveyancer's Diary*****TESTAMENTARY OMISSIONS**

THE article which appeared in this "Diary" on the decision of Roxburgh, J., in *Re Follett* [1954] 1 W.L.R. 1430 was headed "Testamentary Nonsense" (see 98 SOL. J. 880). That was apt enough as a description of the testatrix's will as the learned judge saw it, but the Court of Appeal has taken a different view, making sense, without supplementation or amendment, of a passage in the will which, as it stood, appeared to Roxburgh, J., to be nonsense, and as a result the catchwords which I previously used to convey an impression of the gist of the case have become inaccurate.

The trouble arose on the part of the will in which the testatrix made an ultimate disposition of her residuary trust fund in these words: "I direct my trustees to pay the total income from my residuary trust fund [to X] during her life . . . On and after the death of X my trustees shall hold my residuary trust fund and the future income thereof in trust for all or such one or more exclusively or others of her child or children or remoter issue or any other person or persons as she should by deed or deeds revocable or irrevocable or by will or codicil without transgressing the rules against perpetuities appoint and in default of or subject to any such appointment in trust for her next-of-kin."

It is obvious that there is something wrong with this disposition, and that the words ending with "exclusively" do not fit grammatically with the words which follow and begin "or others". This trust came into operation in 1951, and X, who had no children, thereafter received the income of the fund. In 1953, in purported exercise of the power conferred upon her by the will, X appointed the whole of the fund to herself absolutely, that is to say, she treated the power as if it were a general power of appointment. The trustees of the will had doubts (not unreasonably) whether this was the right interpretation to be put on this part of the will, and applied to the court for directions. On behalf of those interested in the fund in default of appointment it was argued that there was an omission in the testatrix's disposition at the point at which the wording, as it stood, was ungrammatical, and that this omission could be filled in by reference to a well-known precedent in use at the time (1923) when the will was made. This argument (which Roxburgh, J., accepted) was built up on the basis of a general principle which was stated in Jarman on Wills (7th ed., p. 556), in a passage adopted by the court in the case of *Re Smith* [1948] Ch. 49, as follows: "Where it is clear on the face of a will that the testator has not accurately or completely expressed his meaning by the words he has used, and it is also clear what are the words which he has omitted, those words may be supplied in order to effectuate the intention, as collected from the context."

The method of supplementation adopted by Roxburgh, J., can, I think, best be illustrated by setting out the precedent in question in full, with indications of where the testatrix, or the draftsman of her will, departed from its wording. The precedent was one in Key & Elphinstone's *Precedents in Conveyancing*, 11th (1923) ed., p. 901, and, adapted for the purpose of a trust for the benefit of a female life-tenant and her issue, would run as follows: "shall hold my residuary trust fund and the future income thereof in trust for all or such one or more exclusively [of the others] or other of her child or children or remoter issue [at such age or time or respective ages or times if more than one in such shares or with such trusts for their respective benefit and such provisions for their

respective advancement and maintenance and education at the discretion of my trustees] or any other person or persons as she should by deed or deeds revocable or irrevocable or by will or codicil without transgressing the rule against perpetuities appoint and in default of or subject to any such appointment in trust for her next-of-kin." The parts in square brackets did not appear in the testatrix's will, and there was (adopting the assumptions on which Roxburgh, J., approached the question) the further departure from the wording of the precedent in that the testatrix (or her draftsman) wrote "exclusively or others" whereas, if there had simply been an omission at that point of the will of matter which appeared in the precedent, this part of the will would have read "exclusively or other" in the singular.

There was no dispute at any stage of this litigation about the general principle applicable in cases of this kind: this was taken to have been correctly stated in the passage from Jarman adopted in *Re Smith*. The difficulty was in its application. As both Sir Raymond Evershed, M.R., and Romer, L.J., observed, there are two limbs to this principle: first, the court must be satisfied that there has been an inaccurate expression by the testator of his intention, and, secondly, it must be clear what words the testator had in mind at the time when he made his will. Roxburgh, J., held that both these requirements were, or could be, satisfied in the case before him: the manifest incongruity of the language used by the testatrix was, in his judgment, due to an accidental omission, and the nature of the matter which had been accidentally omitted was clear once the testatrix's disposition was compared with the precedent on which (in this view) it had been moulded. This was, doubtless, a bold decision, but it had the merit of affording a reasonable solution of something which had clearly gone wrong. On this view the power of appointment which X had under the will was a special or limited power of appointing the fund in favour of her children or issue only; the reference to "other persons" which appeared, inappositely, in what the testatrix had actually written, or accepted as written, in this part of her will fell into place as a reference to persons on whom a discretion might be conferred in relation to the powers for advancement and the like which could be annexed to appointments of the fund or any part of it under the power; and the power could not, therefore, be exercised by X in her own favour.

The view of the Court of Appeal (see [1955] 1 W.L.R. 429, and p. 275, *ante*) was that it could not be certain either that there had been an accidental or erroneous omission on the part of the testatrix in this disposition or, assuming there had been such an omission, what the omitted matter was; but it was on the nature of the omitted matter that the Court of Appeal felt the greatest difficulty. A number of different points were made in the judgments, but all members of the court concurred in expressing doubt whether it could certainly be said that the will had been modelled on the precedent in question. This precedent was analysed in detail before the Court of Appeal, and it appeared on this analysis that there was no precise verbal correspondence between it (or, rather, parts of it) and the disposition which appeared in the testatrix's will: it could not, therefore, be assumed that this was the precedent which the testatrix, or the draftsman of her will, had by them when the will was prepared. (Romer, L.J., went further than this: in his judgment the internal evidence

of the will showed that the form in Key & Elphinstone was not in fact the form of precedent which had been used.) Conclusions on questions of this kind are largely matters of impression, but it is fair to point out that some modification of the form in Key & Elphinstone, which was drawn on the basis that the tenant for life was the widow of the testator, was essential to fit it to the needs of the testatrix in this case; and if some modification of a form is admitted to be necessary, precise verbal correspondence between the form and the draft based on it is impossible; it then becomes a question of degree to determine how far modification may go without obliterating all correspondence between form and draft. Perhaps the argument which was put successfully to Roxburgh, J., would have appealed more to the Court of Appeal if it had not been linked so closely with one particular form of precedent, if, that is, it had been suggested, on the basis of a study of all the forms in general use for drawing a special power of appointment in favour of a class, that the will corresponded generally with what the Master of the Rolls referred to as "the elaborate formulæ which form part of the stock-in-trade of the conveyancer" and which would be used to insert a power of this kind in a testamentary disposition.

But a more generalised argument on these lines would not, in the end, have got over the real difficulty which the Court of Appeal felt in taking the same view as that which Roxburgh, J., had taken below. This was the lack of certainty on what had been omitted: could not the testatrix, or her draftsman, have intended a general power of appointment in default of objects in favour of whom a preceding special power had been limited? It was impossible to answer this question certainly in the negative, and that being so the problem of what exactly it was that had been omitted (which Roxburgh, J., only solved by relying on a precedent which fitted exactly, like a piece in a jig-saw puzzle, the (to him) apparent gap in the testatrix's testamentary provisions) was a matter of speculation. On this footing the second limb of the principle adopted in *Re Smith* could not be satisfied in this case. At first sight it may seem a matter for regret that so bold and interesting an experiment in the construction of a will should have failed. But the ultimate reason given by the Court of Appeal for its view of the case is difficult to controvert, if the principles on which wills are interpreted are not to degenerate into pure speculation; and that, on any view, could benefit no one.

"A B C"

### **Landlord and Tenant Notebook**

## **RABBITING RIGHTS**

"THIS case," said Lord Reid, at the commencement of his speech in *Mason v. Clarke* [1955] 2 W.L.R. 853 (H.L.); *ante*, p. 274, "arises out of a transaction of no great importance." The case concerned interference with rabbiting rights; and it may well be that such rights, the existence and nature of which have exercised our profession at least since the occasion when the Bishop of Lincoln complained of illegal coney-catching by members of Lincoln's Inn in what is now Lincoln's Inn Fields, will cease to trouble us if myxomatosis exterminates their subject-matter. But the issues raised in *Mason v. Clarke* were of three kinds: whether one of the plaintiffs could (having regard to the law of evidence) prove a grant; whether he could (having regard to the law relating to illegality) enforce it if he could prove it; and whether the defendant's conduct amounted to an interference with the rights conferred on both plaintiffs by the grant. And the litigation has taken a somewhat remarkable course; at first instance one of two plaintiffs was awarded damages and refused an injunction, the other was awarded damages; the Court of Appeal unanimously allowed the appeal against both; the House of Lords has now unanimously reversed the decision of the Court of Appeal, but substituted an injunction for damages in the case of the first-mentioned plaintiff. The line taken by the Court of Appeal did, it was suggested in the second of two articles dealing with the case in this "Notebook" at the time (98 SOL. J. 87), seem to invite critical examination of the whole position.

The facts were that a company (whom I will call "the appellant company") let a farm to the respondent, reserving to the owner all game, rabbits, etc. (subject to the provisions of the Ground Game Act), and containing an agreement by the tenant not to shoot or otherwise to sport on the land (this being also subject to the provisions of the Act mentioned). In 1949 the County Agricultural Executive Committee served notices on both parties calling for the destruction of rabbits. The committee offered to do the work itself, at the same time intimating that orders would be issued if it was not done

by somebody. At the same time the appellant *M* entered into negotiations with the company which resulted in an oral agreement by which he was granted the rabbiting rights for one year in consideration of a payment of £100. He paid this sum to the agents for the estate on 11th October, 1950, and was handed a receipt, previously initialled by a partner in the firm, which acknowledged receipt of "the sum of one hundred pounds. Towards bailiff's wages on *H Estate*. £100." The respondent was informed by the company that *M* was authorised "to shoot the rabbits on the *H Estate*," news which he took very badly; and when *M* entered the land a few days later the respondent ordered him off. The interference for which the action was brought consisted of this ordering off and of the upsetting of snares set by *M*, the authorising of the C.A.E.C. and the authorising of some other persons to ferret for rabbits. It was not till 30th December, 1950—a few days before the action was launched—that the appellant company confirmed the agreement by a deed.

At first instance the above-mentioned acts were held to constitute derogation from grant. But the Court of Appeal considered that they were all, except the ordering off, justifiable in view of the amount of damage which was being done by rabbits, applying *Peech v. Best* [1931] 1 K.B. 1 (C.A.) on this point; in that case Scrutton, L.J., said: "Both landlord and sporting tenant must use their land reasonably having regard to the interest of the other, and will be liable for damage caused to the other by extraordinary, non-natural or unreasonable action." But the Court of Appeal then held that the whole agreement was tainted by illegality as evidenced by the above-mentioned receipt: patently false, according to Denning, L.J.; its only purpose being to facilitate a fraud on the Inland Revenue, according to Romer, L.J. The former considered that whether the appellant *M* was aware of the "fraud" or not he could not rely on the document, and it was held that without it he could not establish his right to specific performance of the agreement and that his claim therefore failed. (For a summary of the differences

between the approaches of Denning, L.J., and Romer, L.J., see 98 SOL. J. 87.)

The House of Lords found itself quite unable to accept this reasoning. It was not, said Viscount Simonds, established that the company had had some dishonest motive; but, suppose it had had such, was *M* "affected, or perhaps I should say infected, by the taint"? The learned viscount considered that *Alexander v. Rayson* [1936] 1 K.B. 169 (C.A.), in which landlord and tenant joined in an attempt to mislead rating authorities, did not apply to such a situation (and, if I may refer once more to the "Notebook" of 6th February, 1954, I see that such a distinction was suggested at pp. 87-88). The comments made by Viscount Simonds and by Lord Reid included reminders that evidence tending to show that *M* had been told that the form of the receipt had "something to do with avoiding income tax" had been rejected by the trial judge.

The question whether, having regard to the Law of Property Act, 1925, s. 52, *M*, not having any deed evidencing his title to the *profit à prendre* at the time, could enforce his agreed rights was most fully dealt with by Lord Morton. Most fully, but very succinctly: *M* had set snares and taken rabbits and paid some helpers, and had thus done work exclusively referable to the oral agreement. The case was, therefore, just one of part performance.

On the question of interference, the emphasis seems to have varied from time to time. Much more, for instance, appears to have been said about the gassing of rabbits at first instance than was said on either appeal; and the removal of snares seems to have been considered more serious or more arguable by or in one court than by or in another. The difficulty,

as I have suggested earlier in this article, was that of applying or distinguishing *Peech v. Best* [1931] 1 K.B. 1 (C.A.) (which, with other authorities on the point, was briefly discussed in the "Notebook" for 30th January, 1954, 98 SOL. J. 72). The question is essentially one of derogation from grant, always apt to bring into the picture such concepts as what is reasonable, what is natural, what is extraordinary; and we then are apt to find that each case depends on its own facts. One might have expected, however, that *Dick v. Norton* (1916), 85 L.J. Ch. 623, would have figured in this case; for, in that decision, the demise to the shooting tenant had been made shortly before the outbreak of World War I, the tenant covenanting to permit the owner to enter the coverts at reasonable times consistent with the non-disturbance of the game for the purpose of thinning the plantations, felling trees or any necessary forester's work; in 1915 the owner sold the timber, no doubt profitably, to a contractor who sold most of it to a munitions concern, some to mining companies for use as pit-props. No reference was made to national emergency, but Eve, J., while holding that it was not a case in which an injunction would issue, considered that the owner had derogated from his grant. It seemed "probable" to the judge that the coverts themselves had been planted in order to preserve the game, and thus we had a clear illustration of the operation of the rule that circumstances must be considered as they are, or are known to be, at the date of the grant (*Robinson v. Kilvert* (1889), 41 Ch. D. 88). It is true that, in *Mason v. Clarke*, what was game from the (re-)grantee's point of view was pests from that of the (re-)grantor; but if their increase did exceed expectations, the extent of the grant was not thereby affected.

R. B.

## HERE AND THERE

### SERIOUS STUDENT

MOTHERS, they say, used to tell their little girls they never should play with the gipsies in the wood. The French say that one should never put one's finger between the wood and the bark. Considering the collective reputation that lawyers have with the public at large as a lurking insidious peril, it is extraordinary what an almost hypnotic fascination they and their haunts and habitats exercise for the generality of people. Not having before their eyes the fear of touching pitch or putting their heads into the lion's mouth, the public eagerly seize every opportunity of infiltrating the courts and their precincts. Mostly it's a mixture of idleness and curiosity, and a vain search for the dramatics which journalists and professional writers-up somewhat fraudulently lead them to believe are the permanent pattern of litigation. But occasionally, apart from the litigants caught inescapably in the whirlpool, you get a stranger with a purpose seriously and diligently pursued, someone who has looked in not just as a visitor but as an attentive student anxious to learn. It is credibly reported (though I have not been so lucky as to effect a personal verification) that there has recently been such a rare visitant at the Law Courts in the Strand. The black suit was in keeping with the earnestness of the mission which the wearer had set herself, although the sequin hat on the blonde, blonde hair might have misled the merely casual observer. She is the ninth wife, the wife in possession, of a reputedly exceedingly wealthy American, intermittently much in the news during his sixty-year pilgrimage through this world. Passing through London, she has taken the opportunity to study our English ways with matrimonial

cases and to discover any items of legal argument and procedural technique, quaint, perhaps, but valuable, which might conveniently be carried back to the States and put to practical uses, though not the practical uses which you might expect from the more widely advertised matrimonial customs across the water. Over there when spouses become interested in process of law it is the same sort of interest that a patient has in an operating theatre when an inconvenient appendix is to be excised. But, unconventionally enough, the lady in this case is not interested in a cutting-out operation in that sense; her object is the precise opposite, and in pursuit of it she is ready to make litigation a full-time occupation. "I came here," she told a reporter, "to rest up a bit between lawsuits," for, as a wife, she is determined not to go the way of her eight predecessors—to stay married, not to make a fresh start. In her own vivid phrase: "The other wives got paid off for peanuts. Me—I'm sticking." If it comes to widowhood (and she has a thirty years' start) "under New York law I must inherit a large part of the estate." With a diligent student of legal procedure a millionaire's pleas of poverty carry little conviction. "My lawyers have already dug up six million dollars and there's a lot more around." The next hearing in the case comes on this month. It will be interesting to see whether the Old World, in the shape of some English legal methods, will be called in to redress the bank balance in the New.

### BLURRED OUTLINE

UNLIKE many matrimonial cases, that one has an engaging simplicity and directness. The classical alternatives of to

be or not to be married are clearly defined even in the most complex strategy of the campaign. It is when these alternatives are blurred that the contending sides lose their sense of direction, like armies fighting in a snowstorm or a fog. Those are the cases when the parties do not know whether they are married or not or when they are married in one sense but not in another. The standard instance in English legal history is the matrimonial Odyssey of the lovely and determined Elizabeth Chudleigh, secretly married to the Earl of Bristol's heir, declared *feme sole* in a collusive suit for jactitation, remarried to the enormously wealthy Duke of Kingston and eventually prosecuted for bigamy in the eighteenth century's most sensational *cause célèbre*, uncertain until the verdict of guilty whether she was Duchess of Kingston or Countess of Bristol. Burke's Peerage in its next edition will have to record another less sensational but by no means uninteresting instance of duplicated matrimonial uncertainty. In 1927 the heir to the Marquess of Bath married at St. Martin-in-the-Fields the Hon. Daphne Vivian. In the course of time they became Marquess and Marchioness. Then two years ago the marriage was dissolved. Both parties have since remarried. Only afterwards was a significant forgotten fact remembered. A year before the ceremony at St. Martin-in-the-Fields, the young people, evading family objections, had been secretly married at St. Paul's, Knightsbridge. But

of this ceremony the divorce court had no cognisance. The resulting situation is without precedent, and the court is now to be asked to amend its decree to remove all doubts whether the first marriage is dissolved. It is odd how often cases with a certain affinity seem to crop up almost simultaneously. Last week Mr. Commissioner Blanco White delivered a decision on a strange tangle of marriages of disputed validity celebrated in Yugoslavia. The husband of dual Swiss and British nationality first married his wife, a Yugoslav, before the British Consul in 1934. This ceremony was of acknowledged validity in English law but of doubtful validity in Yugoslav law. In 1941 another ceremony was performed in a church in Zagreb. In 1953 the husband filed a divorce suit in the local court, the wife neither consenting nor opposing. In the decree granted it was stated that the marriage had been before the municipal people's committee. Now the question was raised what was its effect in England, and, unravelling the knots, the learned commissioner held that the husband was still domiciled in England and that the foreign decree, whatever its local effect, did not affect the valid English marriage. So now the parties stand married in one place but not in another. It is blurred and broken edges like these that provide such an interesting contrast, practical as well as theoretical, to the classical clear-cut outlines of the theory of marriage eternal and indissoluble.

RICHARD ROE.

## NOTES OF CASES

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### COURT OF APPEAL

#### BANKRUPTCY: ALLEGED EXTORTION BEFORE ISSUE OF JUDGMENT SUMMONS: OFFER TO PAY COSTS

*In re Majory, a Debtor; ex parte the Debtor v. F. A. Dumont, Ltd.*

Evershed, M.R., Jenkins and Romer, L.JJ.

17th March, 1955

Appeal from Mr. Registrar Bowyer.

After issue of a specially indorsed writ claiming £800 for money lent with £12 5s. costs, but before the issue of any judgment summons, the debtor visited the solicitors acting for the creditor and, having admitted the debt, offered to make an arrangement whereby he could pay off the debt by instalments. The solicitors said that, in addition to being satisfied as to the arrangement, their client might require the debtor to pay all the costs which he, the creditor, had had to incur. The debtor agreed to do so. No mention was made at that stage of bankruptcy proceedings, but the solicitors said that their instructions did not permit them to delay issuing a summons for judgment, and a summons was in fact issued. The debtor's solicitors wrote confirming the offer made to pay by instalments, and adding that the debtor was prepared to pay "your reasonable costs." After judgment was obtained, the creditor's solicitors informed the debtor's solicitors that the offer made by the debtor was unacceptable, and that deferment, if any, could only be on immediate payment of £440 and the balance to be paid in two instalments. The amount of the costs to be paid in addition within two days was stated to be £21, i.e., £8 15s. more than that awarded by the judgment, representing the full amount of legal costs which the creditor had incurred. In bankruptcy proceedings which followed, the debtor disputed the petition and opposed, unsuccessfully, the making of a receiving order on the ground that the creditor had attempted, in connection with the proceedings, to extort £8 15s. from the debtor in excess of the sums lawfully due. The debtor appealed.

EVERSHED, M.R., reading the judgment of the court, said that it was not correct to say that any sum which a debtor might agree to pay over and above the actual amount of the judgment debt was a sum to which the creditor was not legally entitled and which he might be presumed to have extorted. A bargain made before any threat of bankruptcy proceedings to indemnify the creditor against costs in consideration of his accepting payment by

instalments would, *prima facie*, be perfectly proper. Nor would such a promise by a debtor after bankruptcy proceedings had been initiated necessarily constitute extortion, though the court would view jealously any demand by a creditor having in his hands the potent instrument of bankruptcy proceedings, bearing in mind the general rule that court proceedings, whether bankruptcy or otherwise, could not be used to obtain for a person some collateral advantage, and that a party so using them would be guilty of abusing the process of the court. Reference was made, *inter alia*, to *In re Bebro* [1900] 2 Q.B. 316, and *In re a Debtor* [1928] Ch. 199. On the facts, the creditor was not guilty of extortion, for the promise by the debtor to pay costs was given before any mention of bankruptcy proceedings and even before the issue of the judgment summons, and was not given as the result of any threat by the creditor. After judgment, the creditor was not using the threat of bankruptcy proceedings to get a collateral advantage, but was anxious only to obtain payment of his judgment debt. Appeal dismissed.

APPEARANCES: C. H. Duveen, Q.C., and Muir V. S. Hunter (Isadore Goldman & Son); R. O. C. Stable (Ruston, Clark and Ruston).

[Reported by Miss E. DANGERFIELD, Barrister-at-Law] [2 W.L.R. 1035]

#### RENT RESTRICTION: WHETHER CONTRACTUAL TENANT DIED TESTATE: UNPROVED WILL: WIDOW CONTINUING IN POSSESSION

*Whitmore and Another v. Lambert*

Evershed, M.R., Jenkins and Romer, L.JJ.

21st March, 1955

Appeal from Bedford County Court.

In 1922, the contractual tenant of a dwelling-house within the Rent Acts died, leaving a will in which he appointed his widow sole executrix. She did not prove the will, but remained in possession of the premises, paying the rent, which was subsequently increased from time to time. In 1953 she died, and an adopted daughter, the defendant, who had resided with her for many years, sought to remain in possession of the premises, relying on s. 12 (1) (g) of the Increase of Rent and Mortgage Interest (Restrictions) Act, 1920. The county court judge held that, as the widow did not take out probate, she could not have derived any title to the tenancy under the will: her continued

occupancy must, on that footing, have been referable to the rights arising in favour of a member of a deceased tenant's family by virtue of s. 12 (1) (g), which, accordingly, could not operate a second time at her death in favour of the defendant. He held that, on the tenant dying intestate, the legal estate had vested in the President of the Probate, Divorce and Admiralty Division, and had been duly determined by service of a notice to quit in 1954. He therefore ordered the defendant to give up possession. The defendant appealed.

EVERSHED, M.R., said that the question at issue was unlikely to recur except very infrequently, because the vital words "dying intestate" in s. 12 (1) (g) of the Act of 1920 had been deleted by s. 1 of the Increase of Rent and Mortgage Interest (Restrictions) Act, 1935. Although the will had not been proved, nor was now capable of being proved by virtue of s. 5 of the Administration of Estates Act, 1925, it was admissible in evidence to prove the fact that the tenant had made a will which complied with the requirements of the Wills Act, 1837. He referred to *Williams on Executors* (1921), 11th ed., vol. I, at p. 213, and to *Chetty v. Chetty* (1916), 85 L.J.P.C. 179, at p. 181. Whether or not the words "dying intestate" in s. 12 (1) (g) of the Act of 1920 (as unamended) meant only dying without a will which had been admitted to probate or its equivalent, it was clear that the widow could have justified her entry on the premises by the will, and it could not be said, therefore, that her continued occupation was necessarily referable only to s. 12 (1) (g) of the Act of 1920. The proper inference to be drawn from the facts was that her occupancy was on a contractual basis until the increases of rent had operated to determine the contractual tenancy and to substitute therefor a statutory tenancy, or, alternatively, that the landlords were estopped from denying that the widow's occupancy, before the said increases of rent, was on a contractual basis. It followed that the defendant should have succeeded. The defendant could not be prevented from relying on s. 12 (1) (g) of the Act of 1920 on the ground that, if the tenant had died intestate, the legal estate would, at the death of the widow, have been outstanding in the President of the Probate, Divorce and Admiralty Division of the High Court. His lordship referred to *Mackley v. Nutting* [1949] 2 K.B. 55.

JENKINS and ROMER, L.JJ., agreed. Appeal allowed.

APPEARANCES: *Anthony Goodall* (*Bird & Bird*, for *J. Garrard and Allen*, Bedford); *T. H. K. Berry* (*Field, Roscoe & Co.*, for *C. C. Bell & Son*, Bedford).

[Reported by Miss E. DANGERFIELD, Barrister-at-Law] [1 W.L.R. 495]

#### DOCK: SCOPE OF DUTY TO PROVIDE SIGNALLER WHEN LOADING A BARGE

*Smith v. Port Line, Ltd.*

Denning and Parker, L.JJ., and Roxburgh, J.  
30th March, 1955

Appeal and cross-appeal from Devlin, J.

Regulation 43 of the Docks Regulations, 1934 (S.R. & O., 1934, No. 279), provides that: "When a cargo is being loaded or unloaded by a fall at a hatchway, a signaller shall be employed . . . Provided—(i) That this regulation shall not apply in cases where a barge, lighter or other similar vessel is being loaded or unloaded if the driver of the crane or winch working the fall has a clear and unrestricted view of those parts of the hold where work is being carried on." A lighterman in charge of the loading of a lighter in the London Docks by means of a mobile crane walked forward unexpectedly from the stern along the gunwale to give orders to men working in the lighter and was injured by the swing of the crane. He brought an action for negligence and breach of statutory duty under the regulations against the owners of the crane. Devlin, J., found that at the time the crane-driver had a clear and unrestricted view of those parts of the hold where the work was being carried on, and held that neither the crane-driver nor the owners of the crane had been negligent, but that the plaintiff had himself been negligent. But he held that there had been a breach of the duty under reg. 43 in failing to employ a signaller, since the crane-driver on the evidence and photographs might not have been able to see men moving on the gunwale and the quay, and it was too narrow a construction of the regulation to suppose that the area in which the duty to provide a signaller arose was confined to the very spot where work was going on. The reasonable meaning was that the crane-driver should be able to see the place where

work was going on and yet have a sufficient area of vision round about so that he could see the movements of men at work or coming in and out of the particular danger area of work for purposes connected with the work. The owners appealed against the decision on the breach of the regulation, and the plaintiff cross-appealed on the decision that the owners had not been negligent and that he himself had been negligent.

DENNING, L.J., said that if the judge's decision that a signaller should have been employed was right it would mean that signallers would have to be employed on nearly every occasion when barges were loaded or unloaded in the ports of this country. His lordship could not agree with the judge's interpretation of the proviso. All that was necessary to bring the proviso into play was that the crane-driver should have a clear and unrestricted view of "those parts of the hold where work is being carried on." That meant only the hold itself and not the adjoining places like the gunwale or the quay. On the evidence and the photographs, it was clear in this case that the proviso was satisfied and that the crane-driver, whenever the rope came over the square of the hold, had a clear and unrestricted view of all the parts of the hold where work was being carried on. He would allow the appeal and dismiss the cross-appeal.

PARKER, L.J., agreed. The proviso raised two questions: First, of what must the driver have a clear and unrestricted view? Second, at what point of time must he have such a view? On the first question the words themselves were explicit, and confined the area to that part of the hold which was being worked. On the second point, the point of time at which the driver was to have a clear and unrestricted view was when the part of the hold in question was about to become, or had become, a danger area; in other words, once the set on the sling on the fall was over the hatchway. The proviso was considering only the safety of the men working in the hold, and not all of the men, wherever they might be, who were connected with the process of loading or unloading. If the safety of those in the hold was adequately provided for through the driver having a clear view the regulation did not apply, and accordingly there was here no breach of it.

ROXBURGH, J., agreed. Appeal allowed. Cross-appeal dismissed.

APPEARANCES: *Montague Berryman*, Q.C., and *W. G. Wingate* (*Botterell & Roche*); *C. J. A. Doughty*, Q.C., and *I. F. Reuben* (*Bryan O'Connor & Co.*).

[Reported by Miss M. M. HILL, Barrister-at-Law] [1 W.L.R. 514]

#### TOWN AND COUNTRY PLANNING ACT, 1947: PRE-ACT DEVELOPMENT: ENFORCEMENT NOTICE: COMPLAINT OF BREACH OF EXISTING PLANNING CONTROL

*Park Estate (Bridlington), Ltd. v. East Riding County Council*

Denning and Parker, L.JJ., and Roxburgh, J.  
31st March, 1955

Appeal from Divisional Court on case stated by justices.

A local planning authority served an enforcement notice, under the Town and Country Planning Act, 1947, on the owners of a holiday camp which had been developed prior to 1st July, 1948, the appointed day under the Act. The notice stated that the development specified thereunder appeared to be in contravention of planning control, gave particulars of the structures complained of, and required the owners to discontinue the use of the land as a holiday camp and to turn it back to agriculture. The notice did not specify whether the development complained of contravened planning control before or after the appointed day, and did not on its face refer specifically to any section of the Act, but notes on the back of it referred to ss. 23 and 24 of the Act (applicable to development of land without permission carried out after the appointed day) and did not refer to s. 75 (which is concerned with development of land carried out in contravention of planning control under earlier Acts). On a complaint by the owners, justices refused to quash the notice, but on appeal to the Divisional Court it was held that the notice was bad. The local planning authority appealed.

DENNING, L.J., said that the question whether the enforcement notice was valid depended on the true construction of the Act of 1947, and in particular ss. 23 and 75 of that Act, the former of which dealt with post-Act development and the latter with pre-Act development. The development of this holiday camp was long before 1st July, 1948. An enforcement notice, to be

valid, ought to specify the particular development complained of. On a fair reading of the present enforcement notice, it complained only of breaches of the existing planning control since 1st July, 1948, and not at all of breaches of previous planning control. The position was thus that the owner of the land, faced with such a notice, could properly say that he was not guilty of the contravention alleged against him. No permission was required under the Act of 1947 in respect of his development, and he could ask the court under s. 23 (4) of the Act to quash the notice. His lordship would dismiss the appeal.

PARKER, L.J., agreed. The present case was indistinguishable from the decision in *Lincolnshire (Parts of Lindsey) County Council v. Wallace Holiday Camp, Ltd.* [1953] 2 Q.B. 178, despite the difference in the wording of the notice in that case. The development here complained of was a contravention of "planning control," and his lordship thought that "planning control" in connection with the Act of 1947 must be read as, and not be read otherwise than as, referring to current planning control, the new scheme of control set up under the Act of 1947. The position would have been entirely different if the words of s. 75 had been used, namely, "previous planning control"; and if the matter were in any doubt it seemed to be cleared up by the fact that the person on whom the notice was served was asked to read the notes on the back, which were notes dealing with the effect of s. 23 and s. 23 only.

ROXBURGH, J., agreed. Appeal dismissed. Leave to appeal.

APPEARANCES: B. J. M. MacKenna, Q.C., and W. L. Roots (Sharpe, Pritchard & Co. for R. A. Whitley, Beverley); G. R. Hinchcliffe, Q.C., and Alan S. Orr (Corbin, Greener & Cook, for Lambert & Parkinson, Bridlington).

[Reported by Miss M. M. HILL, Barrister-at-Law] [2 W.L.R. 1021]

#### RATING: DOCK UNDERTAKING: VALUATION OF OFFICE PREMISES USED FOR DOCK PURPOSES

**Clayton (Valuation Officer) v. British Transport Commission**

Evershed, M.R., Jenkins and Romer, L.J.J. 4th April, 1955

Appeal from the Lands Tribunal by case stated.

The British Transport Commission owned and occupied certain offices as part of their dock undertaking at Hull. These offices were formerly railway hereditaments within s. 1 of the Railway (Valuation for Rating) Act, 1930, and, as such, were exempted from rates. In 1952, the hereditaments ceased to be used for railway purposes and became used for the dock purposes of the Commission and, accordingly, ceased to qualify for exemption from rates. The question was whether the hereditaments should be valued on the "profits basis" as part of the dock undertaking (as the Lands Tribunal had held, affirming the decision of the local valuation court), or under s. 22 (1) of the Rating and Valuation Act, 1925, by reference to the rent which they would command as commercial offices, as the valuation officer submitted on appeal.

EVERSHED, M.R., said, referring to *Metropolitan Water Board v. Hertford Corporation* [1953] 1 W.L.R. 622, that, under modern rating law and practice, a public utility undertaking was, *prima facie*, rated upon the profits basis and, though the method having no statutory sanction was not sacrosanct, something of a very exceptional character would be needed to exclude the application of that method of assessment. It followed that, if the profits basis were to be applied at all in a case to which it was *prima facie* applicable, there was no room for making material distinctions in treatment between individual hereditaments and between types of hereditaments among the totality of the undertaking's indirectly productive hereditaments. Reference was made to *Kingston Union v. Metropolitan Water Board* [1926] A.C. 331 and to the earlier case of *Metropolitan Water Board v. Chertsey Assessment Committee* [1916] A.C. 337. It might be that, in arriving *inter se* at the proper proportion of the sum to be borne for rating purposes by indirectly productive hereditaments, one might instead of taking a percentage of capital value adopt a method of competitive tenancy or the assumed product of a competitive tenancy; but the adoption for the dock undertaking as a whole of the profits basis negated the extraction for separate assessment on a wholly different basis of individual hereditaments. Reference was also made to *Mersey Docks and Harbour Board v. Birkenhead Overseers* (1873), L.R. 8 Q.B. 445, which was decided before the significance of the profits basis had been apprehended and should not in view of the later authorities be followed on this point.

JENKINS and ROMER, L.J.J., agreed. Appeal dismissed. Leave to appeal.

APPEARANCES: M. L. Lyell, Q.C., and Patrick Browne (Solicitor of Inland Revenue); Michael Rowe, Q.C., and K. D. Potter (M. H. B. Gilmour).

[Reported by Miss E. DANGERFIELD, Barrister-at-Law] [1 W.L.R. 504]

#### CHANCERY DIVISION

#### ADMINISTRATION: WILL: REAL ESTATE UNDISPOSED OF: FUNDS TO MEET DEBTS, EXPENSES AND LEGACIES

**In re Martin, deceased; Midland Bank Executor and Trustee Co., Ltd. v. Marfleet**

Danckwerts, J. 10th March, 1955

Adjourned summons.

The Administration of Estates Act, 1925, provides by s. 33: "(1) On the death of a person intestate as to any real or personal estate, such estate shall be held by his personal representatives—(a) as to the real estate upon trust to sell the same; and (b) as to the personal estate upon trust to call in sell and convert into money such part thereof as may not consist of money . . . (2) Out of the net money to arise from the sale and conversion of such real and personal estate . . . the personal representative shall pay all such funeral, testamentary and administration expenses, debts and other liabilities as are properly payable thereout having regard to the rules of administration contained in this Part of this Act, and out of the residue of the said money the personal representative shall set aside a fund sufficient to provide for any pecuniary legacies bequeathed by the will (if any) of the deceased . . . (7) Where the deceased leaves a will, this section has effect subject to the provisions contained in the will." By s. 34: "(3) Where the estate of a deceased person is solvent, his real and personal estate shall, subject to . . . the provisions, if any, contained in his will, be applicable towards the discharge of the funeral, testamentary and administration expenses, debts and liabilities payable thereout in the order mentioned in Part II of Schedule I to this Act." Schedule I, Pt. II: "Order of application of assets where the estate is solvent. 1. Property of the deceased undisposed of by will, subject to the retention thereof of a fund sufficient to meet any pecuniary legacies. 2. Property of the deceased not specifically devised or bequeathed but included (either by a specific or general description) in a residuary gift, subject to the retention out of such property of a fund sufficient to meet any pecuniary legacies, so far as not provided for as aforesaid." By his will made in 1938 a testator bequeathed pecuniary legacies and devised all his real estate to one of his daughters absolutely. He further bequeathed by cl. 2 (3) the residue of his personal estate to his trustees on trust to sell and convert it into money and out of the moneys to arise therefrom and with and out of his ready money to pay his just debts, funeral and testamentary expenses and to stand possessed of the residue as therein directed. By a codicil made in 1944 the testator revoked the devise of his real estate of which he did not make any other disposition. In 1953 he died, his estate being solvent. A summons was taken out to decide out of which of his properties his debts, funeral and testamentary expenses and legacies ought to be paid.

DANCKWERTS, J., said that, *prima facie*, any part of the real or personal estate which was undisposed of was subject to s. 33; whereas s. 33 (2) contained a reference to the setting aside of a fund for pecuniary legacies, s. 34 (3) referred to funeral and testamentary expenses, etc., and did not refer to legacies at all. The provisions of the Act were varied by cl. 2 (3) of the will, which cast on the residuary personal estate the just debts, funeral and testamentary expenses. The question remained whether the legacies were to be paid out of the undisposed of real estate, or whether they were charged primarily on the personal estate as was the law before 1926. Some guidance could be obtained from *In re Thompson* [1936] Ch. 676; there was no intestacy in that case, but the testator directed the retention of funds for legacies out of a mixed fund of realty and personality; Clauson, J., held that there was nothing in para. 2 of Sched. I, Pt. II, which made the personality or realty primarily bear the burden of that obligation and no indication that it was intended to alter the law, so that the old law applied and the personality was primarily liable. In the present case it was para. 1 which applied: that paragraph, in the same way as s. 33 (2), directed that property undisposed of was to be the primary fund for the debts, etc., subject to the retention of a fund to meet pecuniary legacies.

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W. HALLETT & CO. (Est. 1869), Surveyors, Valuers and Estate Managers. (L. J. Nixon, A.R.I.C.S., Chartered Surveyor, A. R. Nixon, A.A.L.P.A.), 6 Royal Parade, Kew Gardens, Richmond. Tel. Richmond 1034 and 5950.  
C. ERNEST MANEY, F.A.I., F.V.I., 1 Cavendish Parade, South Side, Clapham, S.W.4. Tel. 4414.  
TAYLOR, A. W. & CO., Chartered Surveyors, Valuers, Auctioneers and Estate Agents, 159 Putney High Street, S.W.15. Tel. Putney 0034 (3 lines). Est. 1883.  
WATSON & EWEN (Est. 1896), 366 Streatham High Road, S.W.16 (F.R.I.C.S., F.A.I.). Tel. Streatham 0232 and 4788.  
WILLIAM WILLET, LTD., Auctioneers and Estate Agents, Sloane Square, S.W.1. Tel. Sloane 8141. Also at 146 Gloucester Road, S.W.7. Tel. Froisher 2238. And 12 Adeline Place, W.C.1. Tel. Museum 5565.  
HAROLD WILLIAMS & PARTNERS, Chartered Surveyors, Valuers, Chartered Auctioneers and Estate Agents, 70 Victoria Street, S.W.1. Tel. Victoria 2893. And at 80 High Street, Croydon. Tel. Croydon 1931.  
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H. J. BLISS & SONS (Est. 1816), 162/4 Bethnal Green Road, E.2. Tel. BIS 4818/9.  
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CLARKSON & PARTNERS, Chartered Surveyors and Estate Agents, 223 East India Dock Road, E.14. Tel. EAST 1897/8. And 23 Billiter Street, E.C.3. Tel. ROYAL 1006/7.  
MOORE, C. C. & T., 33 Mile End Road, E.1. City Office, 13 Lime Street, E.C.3. Tel. MAN 0335/7.  
C. C. TAYLOR & SON, Auctioneers, Surveyors & Estate Managers, Est. 130 years, 232 Whitechapel Rd., E.1. Tel. BIS 7379.

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A. PERCY OSBORNE & CO., F.R.I.C.S., F.A.I., Est. 1843. 26 Bloomsbury Square, W.C.1. Tel. MUS 7022.  
E. A. SHAW & PARTNERS (Est. 1899), Surveyors and Valuers, 19 and 20 Bow Street, W.C.2. Tel. COV 2255.

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CHESTERTON & SONS, Chartered Surveyors, Auctioneers and Estate Agents, 116 Kensington High Street, W.8. Tel. Western 1234.  
COLE, HICKS & CHILVERS, Surveyors, etc., Helena Chambers, 42 The Broadway, Ealing, W.5. Tel. Eal 4014/5.  
COOKES & BURRELL, Chartered Auctioneers and Estate Agents, Surveyors and Valuers, West Kensington, W.14. Tel. Fulham 7665/6.  
FARNHAM & COIGLEY, Chartered Surveyors & Estate Agents, 9 Kensington Church Street, W.8. Tel. Western 0042.  
FLOOD & SONS, F.A.I., 8 Westbourne Grove, W.2. Tel. BAY 0803.  
HERBERT W. DUNPHY & SON, Chartered Auctioneers 162 Goldhawk Road, W.12. Tel. SHE 2224/6.  
GEO. WESTON, F.A.I., Auctioneers, Estate Agents, Valuers, Surveyors, 10 Sutherland Avenue, Paddington, W.9. Tel. Cen 7217 (5 lines).  
WHITMAN, PRICE & COLEMAN, 273 High Road, W.4, Tel. CHISwick 5348. And at Bedford Park and Acton.

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Chingford.—R. CHEKE & CO., 122 Station Road, E.4. Tel. SILverthorn 6767.

Chiswick and Bedford Park.—TYSER, GREENWOOD & CO., 386 High Road, H. Norman Harding, F.R.I.C.S., F.A.I., Ernest J. Griffen, F.A.I., G. S. Bradley, F.A.I. Est. 1873. Tel. CHISwick 7022/3/4.

Ealing Common.—JONES & CO., Chartered Auctioneers and Estate Agents, adjoining Ealing Common Station, W.5. Tel. ACO 5006 (3 lines).

Ealing, Hanwell and district.—P. CHASE GARDENER AND CO. F.A.I., Chartered Auctioneers, Surveyors, Valuers and Estate Agents, 87 Uxbridge Road, Hanwell, W.7. Tel. EALing 1918.

East Ham.—HAMLETT'S (LEWIS J. HAMLETT, F.R.I.C.S.), 764 Barking Road, Plaistow, E.13, Surveyors and Estate Agents. Est. 1893. Tel. GRANGewood 0546.

Edgware.—E. J. T. NEAL, F.R.I.C.S., F.A.I., 39 Station Road. Tel. EDG 0123/4.

Finchley.—E. C. LLOYD, 336 Regents Park Road, N.3. Tel. Finchley 6246/7.

Finchley and Barnet.—SPARROW & SON, Auctioneers, Surveyors and Valuers, 798 High Road, N.12. Est. 1874. Tel. HIL 5252/3.

Hammersmith.—MORTON & WATERS, 310 King Street. Valuations, Surveys. Estates Managed. Tel. Riverside 1080 and 4567.

Hanwell.—S. BURGIS PARISH, F.V.I., F.F.S. (Eng.), Surveyor, Valuer and Land Agent, 61 Greenford Avenue, W.7. Tel. EALing 1936 and 2415.

Harrow.—BRADSTREET & CO., of N.W. LONDON (W. R. Marshall, F.A.I.), 71 Station Road, North Harrow (HARrow 5157/8). Established 1925. Other branches at Wembley and Mill Hill. Head Office and Auction Rooms, Hendon, N.W.4.

Harrow.—P. N. DEWE & CO. (P. N. Dewe, F.A.L.P.A., W. H. Atkins, F.A.I., G. Ferrari, A.R.I.C.S., A.A.I., M.R.San.I.), 42 College Road. Tel. 4288/90. Furniture Sale Rooms. Branch offices Hillingdon and Aylesbury.

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Hendon.—M. E. NEAL, F.A.I., 102 Brent Street, N.W.4. Tel. Hendon 6123. Established 1919.

Hendon and Colindale.—HOWARD & MANNING. (G. E. Manning, F.A.L.P.A., F.V.I.), Auctioneers, Surveyors and Valuers, 218 The Broadway, West Hendon, N.W.9. Tel. Hendon 7686/8 and at Northwood Hills, Middx. Tel. Northwood 2215/6.

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(continued from p. ix)

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**Leyton.**—R. CHEKE & CO., 252 High Road, E.10. Tel. Leytonstone 7733/4. And ten other offices.

**Leyton.**—HAROLD E. LEVI & CO., F.A.L.P.A., Auctioneers and Surveyors, 760 Lea Bridge Road, Leyton, E.17. Tel. Leytonstone 4423/4424.

**Leytonstone.**—COMPTON GUY, Est. 1899, Auctioneers Surveyors and Valuers, 55 Harrington Road, Tel. Ley 1123. And at 1 Cambridge Park, Wanstead. Tel. Wan 5148; 13 The Broadway, Woodford Green. Tel. Buc 0464.

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**Mill Hill.**—COSWAY, H. L. G., Chartered Surveyor, 135/7 The Broadway, N.W.7. Tel. MILl Hill 2422/3422.

**Muswell Hill and London Generally.**—ALFRED SLINN & CO., Surveyors and Valuers, Muswell Hill Broadway, N.10. Tel. TUDor 1212/2004.

**Putney.**—QUINTON & CO., F.A.I., Surveyors, Chartered Auctioneers and Estate Agents, 153 Upper Richmond Road, S.W.15. Tel. Putney 6249/6617.

**South Norwood.**—R. L. COURCIER, Estate Agent, Surveyor, Valuer, 4 and 6 Station Road, S.E.25. Tel. LIVINGstone 3737.

**Streatham.**—T. J. WILLIAMS, F.V.I., 221 Streatham High Road, S.W.16. Tel. STR 2066/7/8.

**Tottenham.**—HILLIER & HILLIER (A. Murphy, F.A.I., F.V.A.), Auctioneers, Surveyors, Valuers and Estate Managers, 270/2 West Green Road, N.15. Tel. BOW 3464 (3 lines).

**Wandsworth (Borough of), Battersea and S.W. Area.**—MORETON RICHES, Surveyor, Auctioneer and Valuer, House and Estate Agent, 92 East Hill, Wandsworth, S.W.18. Tel. VANDyke 4166 4167.

**Wembley.**—BRADSTREET & CO., of N.W. LONDON (W. R. Marshall, F.A.I.), 171 Greenford Road, Sudbury Hill (BYRon 5567 8). Established 1925. Other branches at Harrow and Mill Hill. Head Office and Auction Rooms, Hendon, N.W.4.

**Wood Green.**—WOOD & LOACH, Chartered Auctioneers and Estate Agents, Surveyors and Valuers, 235 High Road, N.22. Tel. Bowes Park 1632.

## PROVINCIAL

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**Bedford.**—J. R. EVE & SON, 40 Mill Street, Chartered Surveyors, Land Agents, Auctioneers and Valuers Tel. 67301/2.

**Bedford.**—ROBINSON & HALL, 15A, St. Paul's Square, Chartered Surveyors. Tel. 2201/2/3.

**Luton.**—CUMBERLANDS (Est. 1840). Land and Estate Agents, Auctioneers, 9 Castle Street. Tel. Luton 875/6.

**Luton.**—RONALD MAYNE & CO., Auctioneers and Surveyors, 32 Bute Street, Luton. Tel. Luton 6294/5.

**Luton.**—DAVID RICHARDSON & STILLMAN, Estate Agents and Surveyors, 30 Alma Street. Tel. Luton 1583.

## BERKSHIRE

**Abingdon, Wantage and Didcot.**—ADKIN, BELCHER & BOWEN, Auctioneers, Valuers and Estate Agents. Tel. Nos. Abingdon 1078/9, Wantage 48, Didcot 3197.

**Bracknell.**—HUNTON & SON, Est. 1870. Auctioneers and Estate Agents, Valuers. Tel. 23.

**Faringdon.**—HOBBS & CHAMBERS, Chartered Surveyors, Chartered Auctioneers and Estate Agents. Tel. Faringdon 2113.

**Maidenhead.**—CLAUDE W. BRIGHTEN, F.R.I.C.S., F.L.A.S., Forestry Consultant, 41 Queen Street. Tel. 853.

**Newbury.**—DREWEATT, WATSON & BARTON, Est. 1759. Chartered Auctioneers, Estate Agents and Valuers, Market Place. Tel. 1.

**Newbury and Hungerford.**—A. W. NEATE & SONS, Est. 1876. Agricultural Valuers, Auctioneers, House and Estate Agents. Tel. Newbury 304 and 1620, Hungerford 8.

**Reading.**—HASLAM & SON, Chartered Surveyors and Valuers, Friar Street, Chambers. Tel. 54271/2.

**Windsor and Reading.**—BUCKLAND & SONS, High Street, Windsor. Tel. 48. And 154 Friar Street, Reading. Tel. 2890. Also at Slough and London, W.C.

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**Aylesbury.**—PERCY BLACK & CO., Chartered Surveyors, Chartered Auctioneers and Estate Agents, 21 High Street. Tel. 1271/2.

**Aylesbury.**—W. BROWN & CO., 2 Church Street. Tel. 714. Urban and Agricultural practice.

**Slough.**—EDWARD & CHARLES BOWYER, Chartered Surveyors, 15 Curzon Street. Tel. Slough 20321/2.

**Slough.**—BUCKLAND & SONS, 75 High Street. Tel. 21307. Also at Windsor, Reading and London, W.C.1.

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**Birkenhead.**—SMITH & SONS (Est. 1840), Auctioneers, Valuers. Tel. Birkenhead 1590. And at Liverpool.

**Chester.**—BROWNS OF CHESTER, LTD., Auctioneers, Valuers and Estate Agents, 103 Foregate Street, Tel. Chester 21495/6.

**Chester.**—SWETENHAM, WHITEHOUSE & CO., Auctioneers, Estate Agents, Surveyors, Valuers, 5 St. Werburgh Street. Tel. 20422.

**Conington.**—W. J. WHITTAKER & CO., Incorporated Auctioneers, Valuers and Estate Agents, Conington, Cheshire. Tel. 241.

**Crews.**—HENRY MANLEY & SONS, LTD., Auctioneers and Valuers, Crews (Tel. 2654) & Branches.

**Macclesfield.**—BROCKLEHURST & CO., Auctioneers, Valuers, Estate Agents, King Edward Street. Tel. 2183.

**Nantwich, Northwich, Winsford and Tarporley.**—JOSEPH WRIGHT, Auctioneers, Valuers and Estate Agents, 1 Hospital Street, Nantwich. Tel. 5410.

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**Truro.**—R. G. MILLER & CO., Incorporated Auctioneers, Valuers and Estate Agents, 62 Lemon Street. Tel. Truro 2503.

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**Derby.**—ALLEN & FARQUHAR, Chartered Auctioneers & Estate Agents, 15 & 16 Iron Gate. Tel. Derby 45645 (2 lines).

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**Exminster, East Devon, South Somerset and West Dorset Districts.**—R. & C. SNELL, Chartered Auctioneers, Estate Agents, Valuers and Surveyors, Axminster (Devon), Chard (Somerset) and Bridport (Dorset).

**Bideford and North Devon.**—R. BLACKMORE & SONS, Chartered Auctioneers and Valuers. Tel. 1133/1134.

**Brixham and Torbay.**—FRED PARKES, F.A.L.P.A., Estate Agent, Auctioneer and Valuer, 15 Bolton Street. Tel. 2036.

**Exeter.**—RIPPON, BOSWELL & CO., Chartered Auctioneers and Estate Agents, Valuers and Surveyors. Est. 1884. Tel. 59378 (3 lines).

**Exeter and District.**—ANDREW REDFERN, F.A.I., Chartered Auctioneer, etc., 1 High Street. Tel. 58374/5.

**Exmouth.**—PURNELL, DANIEL & MORRELL, 7 Exeter Road. Tel. 3775. Auctioneers and Estate Agents; Surveyors and Valuers. Branches at Honiton, Sidmouth and Seaton.

**Ilfracombe.**—W. C. HUTCHINGS & CO., Incorporated Auctioneers, Valuers and Estate Agents. Est. 1887. Tel. 138.

**Okehampton, Mid Devon.**—J. GORDON VICK, Chartered Surveyor, Chartered Auctioneer. Tel. 22.

**Sidmouth.**—POTBURY & SONS, LTD., Auctioneers, Estate Agents and Valuers. Tel. 14.

**Sidmouth and East Devon.**—THOMAS SANDERS AND STAFF, Chartered Auctioneers and Estate Agents, Libra House, Sidmouth. Tel. 343; and Axminster. Tel. 3341.

**Torquay.**—COX & SON, Chartered Surveyors and Valuers, Estate Agents, 8 Strand.

**Torquay and South Devon.**—WAYCOTTS, 5 Fleet Street, Torquay.

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**Sherborne.**—PETER SHERSTON & WYLAM. Tel. 61. Dorset-Somerset Area.

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## ESSEX

**Benfleet, Hadleigh and South-East Essex.**—Messrs. JOHN S. LLOYD, F.A.I., Chartered Auctioneers and Estate Agents, Estate House, Hadleigh, Essex. Tel. 58523.

**Chelmsford and Billericay.**—FRED TAYLOR & CO., Chartered Surveyors, Auctioneers, 17 Duke Street, Tel. 3641/2. Billericay. Tel. 112.

**Clacton-on-Sea.**—DONALD COTTAGE, EAVES AND STORY (Chas. W. Eaves, F.A.I., J. V. Story, A.A.L.P.A.), 67/69 Station Road. Tel. 857/8.

**Colchester.**—C. M. STANFORD & SON (Five Partners Chartered Auctioneers and Estate Agents, three of whom are Chartered Surveyors), 23 High Street. Tel. 3165.

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**Leigh-on-Sea.**—HAIR (FREDK. G.) & SON, Auctioneers, and Surveyors, 1528 London Road. Tel. 78666/7.

**Maldon.**—CLAUDE C. COWELL, F.A.L.P.A., F.V.I., 9 London Road. Tel. 88.

**Southend-on-Sea.**—TAYLOR, SON & DAVIS, Chartered Auctioneers and Estate Agents, 37 Victoria Avenue, Tel. Southend 3737. And 33 Hamlet Court Road, Westcliff-on-Sea.

**Southend, Westcliff and Country Districts.**—H. V. & G. SORRELL, Chartered Surveyors, Auctioneers, and Estate Agents, 40 Clarence Street, Southend. Tel. Southend 2225. And at High Street, Rayleigh.

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**Bath, Somerset, Glos. and Wilts.**—FORTT, HATT AND BILLINGS, Chartered Auctioneers and Estate Agents, 3 Burton Street, Bath. Tel. 4268.

**Bristol.**—ALDER (STANLEY) & PRICE, Chartered Surveyors, Chartered Auctioneers and Estate Agents, 7 St. Stephen's Street, Bristol, 1. Tel. 20301 and Branches.

**Bristol.**—LALONDE, BROS. & PARHAM (Est. 1848), 64 Queens Road. Tel. 21331 (5 lines). And at Weston-super-Mare.

**Bristol.**—JOHN E. PRITCHARD & CO., F.R.I.C.S., F.A.I. (Est. 1790), Chartered Surveyors, Chartered Auctioneers and Estate Agents, 82 Queens Road, Bristol, 8. Tel. 24334 (3 lines).

**Cheltenham.**—G. H. BAYLEY & SONS, Chartered Auctioneers and Estate Agents, Valuers, 27 Promenade, Tel. 2102.

**Cirencester.**—HOBBS & CHAMBERS, Chartered Surveyors, Chartered Auctioneers and Estate Agents. Tel. Cirencester 62, 63.

## HAMPSHIRE

**Aldershot.**—ALFRED PEARSON & SON, Auctioneers, Estate Agents, Surveyors and Valuers, 136 Victoria Road. Tel. 17.

**Aldershot and Surrey and Hants Borders.**—KINGHAM & KINGHAM, Auctioneers, Estate Agents, Surveyors and Valuers, Bank House, Grosvenor Road, Aldershot. Tel. 653 (2 lines).

**Alton.**—CURTIS & WATSON, Auctioneers, Surveyors, Valuers and Land Agents, 4 High Street. Tel. 2261 (2 lines).

**Andover.**—F. ELLEN & SON, Land Agents, Auctioneers, Valuers and Surveyors, London Street. Tel. 3444 (2 lines).

**Basingstoke.**—SIMMONS & SONS, Surveyors, Valuers, Estate Agents and Auctioneers. Tel. 199.

**Bournemouth.**—FOX & SONS, Chartered Surveyors, Valuers and Auctioneers, 44/52 Old Christchurch Road. Tel. Bournemouth 6300 (6 lines). Branch Offices in all Bournemouth districts.

**Bournemouth.**—JOLLIFFE & FLINT, F.R.I.C.S., F.A.I. (Est. 1874), Surveyors, Valuers, Estate Agents, Echo Building. Tel. 36.

**Bournemouth.**—RUMSEY & RUMSEY, 111 Old Christchurch Road. Tel. Bournemouth 7080 (7 lines). 12 Branch Offices in Hants and Dorset and Channel Islands.

It had been argued that those provisions merely required the setting aside of a fund, and not the payment of the legacies from it, but there was no object in setting aside a fund unless it was to be used for the payment of the legacies. Accordingly, the legacies would be paid out of the undisposed of real property, and the debts, etc., out of the residuary personal estate. Order accordingly.

APPEARANCES: *R. S. Lazarus* (*Gardiner & Co.*, for *D'Angibau and Malim*, Bournemouth); *J. A. Wolfe* (*Edwin Coe & Calder Woods*, for *Other, Manning & Allin*, Bournemouth); *J. A. Armstrong* (*Alfred Blundell*).

[Reported by F. R. DYMOND, Esq., Barrister-at-Law] [2 W.L.R. 1029]

### QUEEN'S BENCH DIVISION

#### ROAD TRAFFIC: ACCIDENT CAUSED BY UNINSURED DRIVER ON DOCK ROAD: APPLICABILITY OF COMPULSORY INSURANCE

*Buchanan v. Motor Insurers' Bureau*

McNair, J. 15th November, 1954

#### Action.

The Road Traffic Act, 1930, provides by s. 35 (1): "... it shall not be lawful for any person to use ... a motor vehicle on a road unless there is in force in relation to the user of the vehicle by that person ... such a policy of insurance ... in respect of third-party risks as complies with the requirements of this Part of this Act." By s. 121 (1): "'Road' means any highway and any other road to which the public has access and includes bridges over which a road passes." In December, 1949, the plaintiff, a dock worker at the London Docks, was seriously injured as the result of the negligent driving of a lorry driver who was driving a lorry on a dock road within the confines of the London Dock area forming part of the premises of the Port of London Authority. The lorry was being driven without the authority, knowledge or consent of its owner and was uninsured. The plaintiff sued the driver for damages for personal injuries and final judgment was entered for the plaintiff for £2,000 and costs. The driver failed to pay the damages and the plaintiff brought these proceedings against the Motor Insurance Bureau claiming that as the lorry driver ought, under s. 35 (1) of the Road Traffic Act, 1930, to have been insured, the bureau were under a liability to satisfy the judgment by virtue of an agreement entered into with the Ministry of Transport in 1946 whereby the bureau undertook, *inter alia*, to accept liability where an ineffective judgment was obtained against any person in respect of liability required to be covered by a policy of insurance under the Act, whether or not such person was in fact covered by insurance. The defendants denied liability. They contended that the road on which the accident took place was not a road within the meaning of ss. 35 (1) and 121 (1) of the Act, and that in the premises the plaintiff's injury did not create any liability required to be covered by insurance.

McNAIR, J., said that guidance was given by *Harrison v. Hill* [1932] S.C. (J.) 13, a case adopted by the Divisional Court in *Bugge v. Taylor* [1941] 1 K.B. 198. The Lord Justice-General, considering s. 121 (1), said that a road might be within the definition if it was a private road to which "the public" had "access"; "the public" meaning the public generally, and "access" meaning something less than a positive right to go on the road, and something more than a mere lack of physical obstruction; there was "access" if the public could use the road with the permission, express or implied, of the owner. The London Docks were surrounded by a 204 ft. boundary wall, and could be entered only through gates. Although members of the public could and did enter, the dock police had instructions to prevent unauthorised persons from entering, and did frequently stop persons without a pass. On those facts it was impossible to hold that the dock road in question was a road to which the public had access either as of right or by tolerance of the owners. The action therefore failed, but it would have succeeded if the accident had occurred after the coming into force of the Port of London (Consolidation) Act, 1950, which applied, *inter alia*, s. 35 of the Act of 1930 to the roads in the docks. Judgment for the defendants.

APPEARANCES: *R. Castle-Miller* (*Davracotts*); *E. Ryder Richardson*, Q.C., and *A. Head* (*Hair & Co.*).

[Reported by F. R. DYMOND, Esq., Barrister-at-Law] [1 W.L.R. 488]

#### CONTRACT: DELIVERY OF GOODS: STANDARD RAILWAY TERMS AND CONDITIONS: REFUSAL BY RAILWAY SERVANTS TO HANDLE GOODS: LIABILITY OF RAILWAY AUTHORITY

*W. Young & Son (Wholesale Fish Merchants), Ltd. v. British Transport Commission*

McNair, J. 15th March, 1955

#### Action.

The Standard Terms and Conditions of Carriage (Conditions "B") (S.R. & O., 1927, No. 1009) provides by condition 3: "The company shall not be liable for loss ... or detention of or to a consignment ... except upon proof that the same arose from the wilful misconduct of the company or their servants ...". Condition 14 provides: "Where perishable merchandise: (d) Is not delivered in consequence of ... stoppage or restraint of labour from whatever cause, whether partial or general; ... the merchandise may be sold by the company and payment or tender of the proceeds ... shall ... discharge the company from all liability ...".

The plaintiffs, fish importers in London, imported fish from Denmark, which by contract with the Railway Executive, incorporating the Standard Terms and Conditions, was transported by rail to Bishopsgate and thence by railway van direct to the plaintiffs' premises, thus by-passing Billingsgate. The Billingsgate fish porters, in attempting to assert a claim that all imported fish had to pass through Billingsgate, persuaded the Bishopsgate handling and cartage staff not to handle any imported fish consigned direct to London merchants, by threatening to refuse to handle any imported fish at Billingsgate at all. When the Billingsgate men discovered that two consignments of fish had been delivered from Bishopsgate direct to London merchants they ceased to handle any Danish fish. However, under persuasion they called off the ban while attempts were made to secure the end they wanted by other means. There were subsequent threatened stoppages. In September, 1952, two shipments to the plaintiffs arrived at Bishopsgate station. The men there, on the orders of their local departmental committee, refused to send the goods out. Had any attempt been made to deliver them by any other means there would have been a serious stoppage of work. The Railway Executive, taking the view that delivery in accordance with the contract had become impracticable, sold the fish for £54 7s. 10d. net, which they tendered to the plaintiffs. The plaintiffs claimed against the defendants, as successors of the Railway Executive, the full value of the fish, which was agreed at £180, though the main purpose of the action was to establish their right to claim direct delivery to their premises.

McNAIR, J., said that on the facts he was satisfied (1) that the action of the Bishopsgate men in refusing to handle the consignment amounted to "wilful misconduct" within condition 3, if it applied; (2) that their action in carrying out a decision of their local committee amounted to a "partial stoppage of labour" within the meaning of condition 14; (3) that such action did in fact prevent delivery in accordance with the contract; (4) that it would have been impracticable to effect alternative delivery otherwise than through Billingsgate, which was unacceptable to the plaintiffs, and (5) that there was no failure by the railway officials to take all reasonable steps to avert such action. It was argued for the plaintiffs that condition 3, though in form exemptive, when properly construed imposed liability on the railway when the loss arose from wilful misconduct of their servants, so that the phrase "restraint of labour" in condition 14 must be read as not applying to restraint of labour of their own servants, or at least as not applying when such restraint of labour on their part amounted to wilful misconduct. On the whole, such an argument ought not to prevail. Condition 3 should not be read as imposing affirmatively a liability for loss arising from wilful misconduct; it was only one of a number of exemptive conditions upon any one of which the railway could rely if they could bring themselves within its terms. Further, the standard terms and conditions applicable to carriage at company's risk rates contained no similar condition, and it would be strange if railways were to be exempted from losses arising from the actions of their servants when the carriage was at company's risk rates, while they were denied such exemption when the carriage was at owner's risk rates. Accordingly, the railway authority was protected by condition 14. Judgment for the defendants.

APPEARANCES: *E. Gorst, Q.C.*, and *D. Collard (Edell & Co.)*; *E. S. Fay* and *J. Main (M. H. B. Gilmour)*.

[Reported by F. R. DYMOND, Esq., Barrister-at-Law] [2 W.L.R. 958]

PROBATE, DIVORCE AND ADMIRALTY DIVISION  
HUSBAND AND WIFE: JUSTICES: PROCEDURE:  
HUSBAND'S LETTER TO COURT: FAILURE TO ASSIST  
LITIGANT IN PERSON: REFUSAL TO ALLOW CLOSING  
ADDRESS ON LAW: SLUTTISHNESS AS DEFENCE TO  
DESERTION

*Marjoram v. Marjoram*

Lord Merriman, P., and Collingwood, J.

16th February, 1955

Appeal by wife from the dismissal by the justices for the Wallington petty sessional division of Surrey on 10th December, 1954, of her complaints of adultery and desertion.

The wife sought an order in a court of summary jurisdiction on the grounds of desertion and adultery. Prior to the hearing, at which the wife was represented and the husband was not, the husband had written to the court setting out his case and alleging that he had left the home because of his wife's sluttishness. No notice of any kind was given to the wife or her solicitor of the existence of this letter; the allegations of sluttishness were not put in cross-examination but were first made at the end of the husband's examination-in-chief when the letter was produced to him and he was asked if its contents were true. The court refused the wife an adjournment to consider the position and if desired to call witnesses, although she was allowed to return to the witness-box to deal with the allegations; and the court further refused to allow the wife's solicitor to address the court at the close of the evidence upon the law relating to just cause for leaving in the circumstances alleged. The charge of adultery was dismissed for want of corroboration at the close of the husband's evidence-in-chief; but the court failed to remind the husband when giving his evidence to deal with admissions and conduct alleged against him.

LORD MERRIMAN, P., giving judgment, said that the trial had taken such an unsatisfactory course that it was impossible to support the decision; but that as it was plainly a matter which could not be decided in the absence of seeing and hearing the witnesses, there must be a rehearing. His lordship outlined the evidence upon the issue of adultery and, referring to the impropriety of a litigant writing *ex parte* to the court to give his views upon the case, added that if the matter had been properly handled much harm need not have been done, because although the wife had been represented, the husband had not been, and in such circumstances, if any difficulty occurred in the presentation of his case, it was the duty of the justices to comply with the provisions of s. 61 of the Magistrates' Courts Act, 1952, as to the examination of witnesses by the court. The clerk, moreover, might have done what would appear to be elementary, that was to say, he might have informed the wife's solicitor that he had received the letter, given it to him to read in open court or had it read out, so that the substance of it might be known, and then given consideration to an application for an adjournment which might reasonably have been made. That course had not been taken, and not one single question had been put to the wife in cross-examination about her alleged sluttishness; neither was the letter, the contents of which had clearly influenced the decision of the justices, referred to at that stage. It was also relevant to the duty of the court under s. 61 to remind the husband that he had not dealt with an allegation by the wife that he had admitted sleeping with the woman concerned; that also had not been done. Referring to the dismissal of the complaint of adultery, his lordship said that, although if justices thought that there was nothing in a case when they had heard one side, they were entitled to stop the case, yet speaking generally it was unwise to do so until they had at least heard the whole of the evidence. In the present case the evidence showed at least a *prima facie* case of adultery, and the question also arose whether it had been the alleged "sluttishness," or another and more potent reason which was the cause of the husband leaving. The stopping of the case as regards adultery was so manifestly wrong from the point of view of both complaints that that alone would almost oblige the court to order a new trial. But, in addition, the wife and her solicitor had had no idea up to that

stage that the charge of "sluttishness" would be made. Yet although taken completely by surprise, the solicitor had been refused an adjournment and, the justices having refused it, having given the wife no opportunity of calling witnesses to refute the charges that had been sprung upon her advocate, the wife's solicitor wanted to argue that those allegations that were put forward as a defence to the charge of desertion were not good enough; and it had been stated that in particular he wished to cite *Bartholomew v. Bartholomew*. He had not been allowed to cite that case, or to argue the matter as a point of law at all. Admitting that the complainant's advocate, who had the opportunity of addressing the court at the beginning, was not entitled to address the court on the facts again, it was common ground between counsel that, speaking generally, if a point of law was raised the complainant's advocate had the right to address the court on the law as a matter of courtesy, a matter of discretion, although not a matter of statutory right. The practice was a sensible one, and it was a pity that it had not been followed. The accumulated errors in the conduct of the proceedings made the trial so unsatisfactory that there must be a rehearing. His lordship, referring to *Bartholomew v. Bartholomew* [1952] W.N. 535; [1952] 2 T.L.R. 934, said that there had been no decision in which "sluttishness" alone had been held to be a sufficient ground for constructive desertion, but referred to the possible effect of *Lang v. Lang* [1954] 3 W.L.R. 762, upon the findings in that case.

COLLINGWOOD, J., concurred. Appeal allowed: rehearing ordered.

APPEARANCES: *Peter Dow (McMillan & Mott)*; *Miss Morgan Gibbon (Copley Singleton & Billson, Croydon)*.

[Reported by JOHN B. GARDNER, Esq., Barrister-at-Law] [1 W.L.R. 520]

HUSBAND AND WIFE: MAINTENANCE: ABILITY TO  
OVERDRAW: CONDUCT OF PARTIES: PROPER COM-  
PLIANCE WITH ORDER FOR DISCOVERY: NOTICE OF  
ALLEGATIONS

*J.—P. C. v. J.—A. F.*

Sachs, J. 18th March, 1955

Summons (adjournment into court for judgment).

A business man whose wife had divorced him for adultery had been making capital gains with the aid of his ability to obtain overdrafts, his interests being in property and building projects; and although according to his tax returns his taxable income during the previous three years had remained under £70, and he had stated in an affidavit that he was being pressed by creditors and would not know where to turn if any further financial burden were placed upon him, the evidence showed that he had been living at least at the rate of £1,100 a year net with the use of a car in addition. It was submitted on his behalf that it was wrong in principle to order maintenance when there was no income, no capital from which income could be derived, and no capital which could be trenced upon to produce an annual payment. The wife filed her petition for divorce in October, 1949, but took no further step until in December, 1952, she obtained leave to amend her petition by asking for discretion in respect of adultery in 1949, shortly before the filing of her petition. An answer was filed in February, 1953; and in June, 1953, the wife by way of amendment to her petition, and of supplemental petition, alleged cruelty, and made further charges of adultery with the woman named. The cruelty charges were closely linked with the allegations of adultery. The answer was later withdrawn, and in December, 1953, the wife was granted a divorce on the ground of adultery. She did not in the circumstances press her cruelty charges. Upon the subsequent issue of maintenance the husband failed properly to comply with an order for discovery, but was allowed to give evidence-in-chief at length and to refer to fresh financial matters, at an oral examination before the registrar, against whose interim order both parties appealed. *Cur. adv. vult.*

SACHS, J., reading his judgment, said that "ability" to provide maintenance, within the meaning of s. 19 of the Matrimonial Causes Act, 1950, should be broadly construed in the light of the realities of each case, and that such "ability" might include an ability to provide money by overdraft or through loans. Men who with such ability earned capital gains, including those who acquired reversionary interests upon borrowed money, might live more than comfortably without being possessed

of salary, of dividends, or of assets readily realisable for sums in excess of their overdrafts; and the reality of their position should be considered in assessing the amount of maintenance to be paid by them. His lordship ordered that, having regard to the husband's ability to provide money by overdrafts and loans, and to the standard at which he was living, he should pay maintenance at the rate of £5 10s. a week free of tax upon an interim order until the position of certain business transactions had clarified. His lordship said that a mere delay in filing a discretion statement was not relevant as between the parties in assessing the amount of maintenance, although it might be a matter for consideration by the court upon the question of the exercise of discretion; the adultery itself in the present case had not been such as should in the circumstances affect the quantum. While leaving open the question whether the bringing of gross unfounded charges might not be taken into account, the fact that the wife in the present case did not proceed with the charges of cruelty should not be held against her; and if an alleged lack of sincerity did not affect the grant of a decree, it was doubtful whether it would affect the question of maintenance. She was not in the circumstances under an obligation to go out and earn a living, and, if she did, the husband was not entitled to have the whole amount of her earnings taken into account, although some "discount" might be made. His lordship observed that the obligation of the husband in maintenance proceedings was to be full, frank and clear in his disclosure of his means to the court, and any shortcoming in that respect should be visited at least by the court drawing inferences against him on matters the subject of shortcomings. He should, if possible, be forced before any cross-examination as to means to comply properly with orders for discovery, and not to be allowed to give evidence-in-chief, and in cross-examination, without such prior compliance. It was also highly desirable that any charges which it was intended to make against the other party at the hearing of a maintenance application should first be reduced to writing in a form which would enable them to be properly met and enable any appellate court to know precisely what the charges were. Wife's appeal allowed.

APPEARANCES: *Gerald Reed and Henry Thomas* (Herbert Oppenheimer, Nathan & Vandyk); *S. Jackson and J. C. J. Tatham* (Wedlake, Letts & Birds).

[Reported by JOHN B. GARDNER, Esq., Barrister-at-Law] [2 W.L.R. 973]

#### DIVORCE: CRUELTY: WIFE'S DELIBERATE REFUSAL TO HAVE CHILDREN

*Forbes v. Forbes*

Mr. Commissioner Latey, Q.C. 4th April, 1955

Undefended petition for divorce by a husband.

During a period of some eight years' cohabitation a wife, who on her own admission before justices had no fear of childbirth, consistently refused, with the object of avoiding conception, to allow her husband to have free intercourse, and insisted on precautions which were obnoxious to him. The husband's health was affected.

Mr. Commissioner LATEY, Q.C., said that the main ground of the husband's case was that his wife consistently refused, with the object of avoiding conception, to allow free intercourse, and insisted on precautions which were obnoxious to him, with the result that that course of conduct on her part undermined his health. The injury to health had been established. The commissioner, after referring to *Baxter v. Baxter* [1948] A.C. 274, *Walsham v. Walsham* [1949] P. 350, *White (otherwise Berry) v. White* [1948] P. 330 and *Cackett (otherwise Trice) v. Cackett* [1950] P. 253, considered *Fowler v. Fowler* [1952] 2 T.L.R. 143, which on the face of it, he said, might seem to run counter to the proposition that abstinence from intercourse might amount to cruelty. In that case the court had emphasised the wife's fear of childbirth, but it was also emphasised that the wife had never been warned by the husband of the effect of her refusal on his health. The essential distinction in the present case was that the husband had constantly complained to the wife of her course of conduct, and had used all reasonable means to persuade her to change her attitude, and that she had been well aware that she had caused him extreme anxiety and misery by her persistence in refusing any opportunity of conception. Knowing her husband's feelings, knowing that the practice she insisted upon was repulsive to him, and that his desire for fatherhood had become a legitimate obsession, taunting him as she did, she could not be acquitted of

the intention to pursue her policy of abstinence, whatever the result to him. And she had sworn on oath before the justices that she had no fear of childbirth. The wife had, in those circumstances, been guilty of cruelty to the husband. Decree nisi.

APPEARANCE: *James Stirling* (Sharpe, Pritchard & Co., for A. G. Smith & Son, Melksham, Wilts); the wife did not appear and was not represented.

[Reported by JOHN B. GARDNER, Esq., Barrister-at-Law] [1 W.L.R. 53]

#### COURT OF CRIMINAL APPEAL

##### CHARGE OF ASSAULT WITH INTENT TO RESIST ARREST: ARREST UNLAWFUL: VALIDITY OF CONVICTION FOR COMMON ASSAULT

*R. v. Wilson*

Lord Goddard, C.J., Cassels and Sellers, JJ.

12th January, 1955

Appeal against conviction.

The defendant was charged under s. 38 of the Offences against the Person Act, 1861, with assault on a gamekeeper with intent to resist lawful arrest. The gamekeeper stated in evidence that, before attempting to arrest the defendant, who was accompanied by another man, he asked the defendant his name but not his address; the defendant then kicked him and said "Get out knives." The deputy chairman ruled that the intended arrest was unlawful, as the gamekeeper had not asked the defendant for his address, as required by s. 31 of the Game Act, 1831. He directed the jury that the defendant could not be convicted of the offence charged, but that he might be convicted of common assault if they thought that he had used more force than necessary to avoid the unlawful apprehension. The jury convicted the defendant of common assault, and he appealed on the ground that he could not, when charged with assault to evade arrest, be convicted of a common assault.

LORD GODDARD, C.J., said that the directions given by the deputy chairman were unimpeachable. An assault to evade arrest was simply one form of aggravated assault; it involved an assault, and the jury had found the defendant guilty of an assault without aggravation. The law was well established that where a man was charged with an offence he might be found guilty of a lesser offence of the same quality. An assault was necessary to establish the offence laid in the indictment; the intent laid in the indictment had failed, but the assault remained. Appeal dismissed.

APPEARANCES: *P. Bruce* (Hibbert & Son, Mansfield); *A. Ellis* (Registrar, Court of Criminal Appeal).

[Reported by F. R. DYMOND, Esq., Barrister-at-Law] [1 W.L.R. 493]

##### COMMITTAL FOR NON-PAYMENT OF FINE: WHETHER A SENTENCE OF IMPRISONMENT

*R. v. Driscoll*

Lord Goddard, C.J., Ormerod and Gorman, JJ.

4th April, 1955

Appeal against sentence.

The Criminal Justice Act, 1948, provides by s. 22: "(1) Where a person is convicted on indictment of an offence punishable with imprisonment for a term of two years or more, and that person—(a) has been convicted on at least two previous occasions of offences for which he was sentenced to Borstal training or imprisonment . . . the court, if it sentences him to a term of imprisonment of twelve months or more, shall, unless, having regard to the circumstances, including the character of the offender, it otherwise determines, order that he shall for a period of twelve months from his next discharge from prison be subject to the provisions of this section." The defendant was convicted at West London Magistrates' Court of three offences of larceny and one offence of obtaining goods by false pretences. He was committed for sentence under s. 29 of the Magistrates' Courts Act, 1952, to the County of London Sessions. At the London Sessions two previous convictions were proved against the defendant, namely, obtaining credit by fraud, for which he had been sentenced to twelve months' imprisonment, and certain Customs offences for which he had been ordered to pay a fine and to undergo a term of three months' imprisonment in default of payment. The full amount of the

fine was not paid and he accordingly spent some time in prison in respect of the unpaid balance. On the proving of these two convictions he was sentenced to three years' imprisonment and a supervision order was made pursuant to s. 22 of the Act. The defendant appealed, contending that imprisonment in default of payment of a fine was not a sentence of imprisonment within s. 22 (1) (a).

LORD GODDARD, C.J., said that s. 80 of the Act provided that "sentence . . . does not include a committal in default of payment of any sum of money . . ." It was arguable that the words "payment of any sum of money" referred only to such matters as maintenance orders. But on full consideration,

especially having regard to ss. 1 and 41 of the Criminal Justice Administration Act, 1914, the court was of opinion that a committal in default of the payment of a fine was not a conviction which could be taken into consideration under s. 22 (1) (a) for the purpose of imposing a supervision order under that section. The present decision was confined to orders under s. 22 (1), and did not affect convictions under that part of s. 21 which dealt with corrective training. The order made under s. 22 would be set aside. Appeal allowed in part.

APPEARANCES: *S. A. Morton* (Registrar, Court of Criminal Appeal); *J. C. Phipps* (Director of Public Prosecutions).

[Reported by F. R. DYMOND, Esq., Barrister-at-Law] [2 W.L.R. 970]

## SURVEY OF THE WEEK

### HOUSE OF LORDS

#### PROGRESS OF BILLS

##### Read First Time:—

Cheshunt Urban District Council Bill [H.C.]	[26th April.
Maidstone Corporation Bill [H.L.]	[27th April.
National Insurance (No. 2) Bill [H.C.]	[28th April.
Nuneaton Corporation Bill [H.C.]	[26th April.
Public Libraries (Scotland) Bill [H.C.]	[28th April.
Public Service Vehicles (Travel Concessions) Bill [H.C.]	[27th April.

##### Read Third Time:—

British Museum Bill [H.C.]	[27th April.
Children and Young Persons (Harmful Publications) Bill [H.C.]	[28th April.
Clyde Navigation (Superannuation) Order Confirmation Bill [H.C.]	[28th April.
Crofters (Scotland) Bill [H.C.]	[26th April.
Glasgow Corporation (Extension of Time) Order Confirmation Bill [H.C.]	[28th April.
Requisitioned Houses and Housing (Amendment) Bill [H.C.]	[28th April.

### HOUSE OF COMMONS

#### A. PROGRESS OF BILLS

##### Read First Time:—

Ministry of Housing and Local Government Provisional Order (Colne Valley Sewerage Board) Bill [H.C.] [26th April.  
To confirm a Provisional Order of the Minister of Housing and Local Government relating to the Colne Valley Sewerage Board.

##### Read Second Time:—

Doncaster Corporation (Trolley Vehicles) Provisional Order Bill [H.C.] [28th April.

##### Read Third Time:—

Bournemouth Corporation (Trolley Vehicles) Provisional Order Bill [H.C.] [28th April.  
Finance Bill [H.C.] [29th April.  
Oil in Navigable Waters Bill [H.L.] [26th April.

#### B. QUESTIONS

##### BANKRUPTCIES AND DEEDS OF ARRANGEMENT

Mr. PETER THORNEYCROFT said that in 1953 and 1954 there were respectively 2,128 and 2,096 bankruptcies in England and 94 and 80 in Wales and Monmouthshire. In these years 302 and 315 deeds of arrangement had been registered.

[25th April.

##### GROUND RENTS

The ATTORNEY-GENERAL said that he was not aware of any hardships being caused by any increase in ground rents now taking place. It might be that a higher rent than that fixed on the grant of a lease many years ago was asked for on its renewal, but a tenant was not bound to accept onerous terms or, in default of acceptance, to quit the premises, as under the Landlord and Tenant Act, 1954, he could enjoy the protection of the Rent Acts when the ground lease expired and so obtain the security of tenure afforded by those Acts.

[26th April.

### BRITISH WOMEN (FOREIGN HUSBANDS)

The HOME SECRETARY declined to introduce legislation to provide that any foreigner who married a British woman should be entitled to acquire British nationality thereby.

[28th April.

### HOMOSEXUAL OFFENCES AND PROSTITUTION (REPORT)

The HOME SECRETARY said that the Committee investigating the law on these matters was still receiving evidence and it was not possible to say when it was likely to report.

[28th April.

### MAGISTRATES' COURT (BALHAM)

The HOME SECRETARY said that the rebuilding of the Metropolitan Magistrates' Court at Balham had been interrupted by the war and its resumption had been delayed by the need for economy in capital investment.

He was fully aware of the need for a new building, but regretted that he was still not able to say when work on it would start. He could say, however, that this would be the first court to be rebuilt.

[28th April.

### INCOME TAX ACT, 1952, s. 468

Mr. H. BROOKE said that 1,100 applications had been made to the Treasury for consent to transactions under the four heads of s. 468. Of these, 1,085 had been granted and fifteen refused.

[28th April.

### STATUTORY INSTRUMENTS

**Brush and Broom Wages Council** (Great Britain) Wages Regulation Order, 1955. (S.I. 1955 No. 577.) 1s. 11d.

**Burgh of Newton Stewart** (Loch Middle) Water Order, 1955. (S.I. 1955 No. 591 (S.62).) 5d.

**Central Land Board** Payments (Amendment) Regulations, 1955. (S.I. 1955 No. 611.)

By these regulations the closing date for submitting claims to the Central Land Board for payments under Pt. I of the Town and Country Planning Act, 1954, has been extended from 30th April to 30th June, 1955. See p. 295, *ante*.

**Central Land Board** Payments (Scotland) Amendment Regulations, 1955. (S.I. 1955 No. 609 (S. 63).)

**Cereals** (Deficiency Payments) Order, 1955. 5d.

**Coal Distribution** (Restriction) Direction, 1955. (S.I. 1955 No. 596.)

**Education Authorities** (Scotland) Grant (Amendment No. 6) Regulations, 1955. (S.I. 1955 No. 590 (S. 61).)

**Electricity** (Consultative Council) (South of Scotland District) Regulations, 1955. (S.I. 1955 No. 586 (S. 60).) 5d.

**Electricity** (Metropolitan Undertakings) (Transfer) Order, 1955. (S.I. 1955 No. 597.)

**Glasgow-Greenock-Monkton Trunk Road** (Loans and Another Diversion) Order, 1955. (S.I. 1955 No. 588.)

**Importation of Bees** Order, 1955. (S.I. 1955 No. 589.) 5d.

**International Organisations** (Immunities and Privileges of the Council of Europe) (Amendment) Order, 1954. (S.I. 1954 No. 1470.) 5d.

**King's Lynn-Sleaford-Newark Trunk Road** (Windmill House, Holdingham Diversion) Order, 1955. (S.I. 1955 No. 603.)

**London Traffic** (Prescribed Routes) (Chigwell) Regulations, 1955. (S.I. 1955 No. 605.)

London Traffic (Prescribed Routes) (West Ham) Regulations, 1955. (S.I. 1955 No. 606.)

**Matrimonial Causes** (Amendment) Rules, 1955. (S.I. 1955 No. 593 (L. 2).)

Under these rules long defended matrimonial causes may be tried at Sheffield Assizes, the holding of which was provided for by the recently made Assizes (North-Eastern Circuit) Order, 1955.

**National Health Service** (General Dental Services) Amendment Regulations, 1955. (S.I. 1955 No. 604.)

**National Health Service** (General Dental Services) (Scotland) Amendment Regulations, 1955. (S.I. 1955 No. 610 (S. 64).)

**Road Haulage Wages Council Wages Regulation Order**, 1955. (S.I. 1955 No. 592.) 1s. 2d.

**Stopping up of Highways** (Essex) (No. 3) Order, 1955. (S.I. 1955 No. 598.)

**Stopping up of Highways** (Essex) (No. 4) Order, 1955. (S.I. 1955 No. 599.)

**Stopping up of Highways** (Hastings) (No. 1) Order, 1955. (S.I. 1955 No. 600.)

**Stopping up of Highways** (Hertfordshire) (No. 1) Order, 1955. (S.I. 1955 No. 602.)

**Stopping up of Highways** (Huntingdonshire) (No. 4) Order, 1955. (S.I. 1955 No. 601.)

**Stopping up of Highways** (Kent) (No. 4) Order, 1955. (S.I. 1955 No. 595.)

**Stopping up of Highways** (Wiltshire) (No. 2) Order, 1955. (S.I. 1955 No. 582.)

**Ware Potatoes** (Amendment) Order, 1955. (S.I. 1955 No. 626.)

**Wool** (Guaranteed Average Price) Order, 1955. (S.I. 1955 No. 614.)

[Any of the above may be obtained from the Government Sales Department, The Solicitors' Law Stationery Society, Ltd., 102-103 Fetter Lane, E.C.4. The price in each case, unless otherwise stated, is 4d., post free.]

## NOTES AND NEWS

### Honours and Appointments

The Queen has been pleased to approve the appointment of Mr. HUGH CAREY MORGAN to be Chairman of the Court of Quarter Sessions for the County of Cornwall, with effect from 25th April.

The Queen has been pleased to approve the appointment of His Honour Judge THOMAS FREDERICK SOUTHALL to be Deputy Chairman of the Court of Quarter Sessions for the Eastern Division of the County of Suffolk, with effect from 28th April.

Mr. W. A. L. RAEBURN, Q.C., and Mr. H. P. J. MILMO have been elected Masters of the Bench of the Middle Temple.

Mr. JOHN FRANK CLEGG, Town Clerk of Birmingham, has been presented with the medal of the Legion of Honour by M. Edouard Herriot, Mayor of Lyons, on behalf of the President of the French Republic, M. René Coty. Mr. Clegg received the Cross of a Chevalier.

### Personal Notes

On 26th April, the tenth anniversary of his elevation to the Bench, His Honour Judge W. E. P. Done, M.C., Judge of the Clerkenwell County Court, the author of "Looking Backward in West Sussex," retired. On His Honour's entering his court, accompanied by his wife and daughter, Messrs. Bibby Trevor and Dennis Smith, on behalf of the Bar, Messrs. Gentry (practising as Trott & Gentry), Hardwick (practising as Clark, Lewthwaite & Co.) and Gunn (practising as Rance & Co.), on behalf of solicitors, Mr. Registrar Fraser, on behalf of the court staff, and Mr. L. M. Friend, his predecessor, all paid tribute to the judge's courtesy, patience, thoroughness and acumen. In reply, the judge expressed his thanks to both branches of the legal profession and to the court staff.

Mr. Robert Hugh Willatt, solicitor, of Nottingham, has been elected president of the Nottingham City Business Club at the annual meeting of the Club on 28th April.

### Miscellaneous

#### No. 5 (SOUTH WALES) LEGAL AID AREA: CHAIRMAN'S ANNUAL REPORT

An appeal to conducting solicitors in Legal Aid cases to lodge their bills for taxation as soon as possible after the hearing of their cases was made by the chairman of No. 5 (South Wales) Legal Aid Area in his report for 1953-54, presented at the annual general meeting at Porthcawl on 22nd April. A delay of many months, he said, was fair neither to solicitors themselves nor to counsel, particularly when it was borne in mind that both branches gave up 15 per cent. of their fees. Also, area headquarters did not like to keep their files open longer than necessary, as it meant innumerable inquiries from the chief accountant.

The chairman said that there were now 369 solicitors and 41 barristers on the various panels in the area. Local committees had received 1,507 applications for civil aid certificates during the year, of which 1,097 were granted. Of the 812 cases in the Divorce Division, 604 were undertaken by private practitioners, and 208 were allocated to the Divorce Department. The Scheme had worked well in the area during the year.

### SIGNATURE OF FORMAL DOCUMENTS BY PROXY

The appeals in *London County Council v. Agricultural Food Products, Ltd.*, and *Vitamins, Ltd.* [1955] 2 W.L.R. 925; *ante*, p. 305, were referred to in a question asked of the chairman of the Establishment Committee of the London County Council at a council meeting on 26th April. The chairman said that the manner in which signatures were placed on notices to quit was being examined in the light of the judgments in that case. The council's normal and long-standing practice, when an assistant signed a letter in the name of his chief officer, was for him to add his own initials under the signature, thus indicating that the letter had not been signed by the chief officer personally. The comments of Lord Justice Denning in the case referred to related to a particular notice to quit served on behalf of the council. The notice was, nevertheless, held to be valid.

On 2nd May the Cardiff local office of The Law Society, No. 5 (South Wales) Legal Aid Area, dealing with applications under the Legal Aid and Advice Act, 1949, moved from 30 Charles Street, Cardiff, to:—

Great Western Hotel Buildings,  
St. Mary Street,  
Cardiff.

(Telephone No. 32844.)

The Merthyr local office moved on the same day from 48 North Street, Dowlais, to:—

The Town Hall,  
Merthyr.

The President of The Law Society (Mr. F. H. Jessop) gave a luncheon party on 28th April in his suite at No. 60 Carey Street. The guests were: the High Commissioner for Canada, Mr. Justice Glyn-Jones, Sir Harry Hylton-Foster, Q.C., M.P., Sir Harold Kent, Mr. D. M. Watson, Mr. R. Egerton Johnson and Mr. T. G. Lund.

### DEVELOPMENT PLANS

#### CITY OF LEEDS DEVELOPMENT PLAN

On 7th April, 1955, the Minister of Housing and Local Government approved with modifications the above development plan. A certified copy of the plan as approved by the Minister has been deposited at the City Engineer's Department, Room 99, Civic Hall, Leeds, 1. The copy of the plan so deposited will be open for inspection free of charge by all persons interested between the hours of 9 a.m. and 5 p.m. on weekdays, and 9 a.m. and 12 noon on Saturdays. The plan became operative as from 27th April, 1955, but if any person aggrieved by the plan desires to question the validity thereof or of any provision contained therein on the ground that it is not within the powers of the Town and Country Planning Act, 1947, or on the ground that any requirement of the Act or any regulation made thereunder has not been complied with in relation to the approval of the plan, he may, within six weeks from 27th April, 1955, make application to the High Court.

## WEST SUFFOLK COUNTY DEVELOPMENT PLAN

On 26th July, 1954, the Minister of Housing and Local Government approved with modifications the above development plan. A certified copy of the plan as approved by the Minister has been deposited at the Shire Hall, Bury St. Edmunds, and certified copies or extracts of the plan so far as it relates to the under-mentioned districts have also been deposited at the places mentioned below.

*Bury St. Edmunds*

Bury St. Edmunds B.C.—Borough Offices, Angel Hill.  
Thingoe R.D.C.—Rural District Council Offices, 1 Northgate Street.

*Sudbury*

Sudbury B.C.—Municipal Offices, Belle Vue.  
Melford R.D.C.—Rural District Council Offices, Chilton House, Newton Road.

*Hadleigh*

Hadleigh U.D.C.—Urban District Council Offices, Toppesfield Hall.  
Cosford R.D.C.—Rural District Council Offices, 32 High Street.

*Haverhill*

Haverhill U.D.C.—Council Offices.

*Newmarket*

Newmarket U.D.C.—Urban District Council Offices, Severals House, Bury Road.

*Clare*

Clare R.D.C.—Rural District Council Offices, Stonehall.

*Mildenhall*

Mildenhall R.D.C.—Rural District Council Offices.

*Stowmarket*

Thedwastre R.D.C.—Rural District Council Offices, 20A Market Place.

The copies or extracts of the plan so deposited will be open for inspection free of charge by all persons interested between the hours of 10.30 a.m. and 4 p.m. on Mondays to Fridays, inclusive, and 10.30 a.m. and 12 noon on Saturdays. The plan became operative as from 22nd April, 1955, but if any person aggrieved by the plan desires to question the validity thereof or of any provision contained therein on the ground that it is not within the powers of the Town and Country Planning Act, 1947, or on the ground that any requirement of the Act or any regulation made thereunder has not been complied with in relation to the approval of the plan, he may, within six weeks from 22nd April, 1955, make application to the High Court.

## DUDLEY COUNTY BOROUGH DEVELOPMENT PLAN

On 31st March, 1955, the Minister of Housing and Local Government approved, with modifications, the above development plan. A certified copy of the plan as approved by the Minister has been deposited at the Town Clerk's Office, The Council House, Dudley. The copy of the plan so deposited will be open for inspection free of charge by all persons interested between 9 a.m. and 1 p.m. and 2.15 p.m. and 5.15 p.m. from Mondays to Fridays, and between 9 a.m. and 12 noon on Saturdays. The plan became operative as from 16th April, 1955, but if any person aggrieved by the plan desires to question the validity thereof or of any provision contained therein on the ground that it is not within the powers of the Town and Country Planning Act, 1947, or on the ground that any requirement of the Act or any regulation made thereunder has not been complied with in relation to the approval of the plan, he may, within six weeks from 16th April, 1955, make application to the High Court.

## Wills and Bequests

Mr. S. G. Ansell, solicitor, of Coventry, left £27,796 (£10,891 net).

## OBITUARY

## MR. A. W. FREEMAN

Mr. Alfred William Freeman, solicitor, of Maldon, Essex, died on 17th April, aged 78. He was admitted in 1899.

## MR. C. GREGORY

Mr. Charles Gregory, solicitor, of Barton Street, London, S.W.1, died on 27th March, aged 81. He was admitted in 1897.

## MR. A. H. GREGSON

Mr. Allan Humfrey Gregson, solicitor, of Southend-on-Sea, died on 13th April. He was admitted in 1920.

## MR. D. W. JACKSON

Mr. Daniel Wilfred Jackson, of Marple, Cheshire, died on 18th April, aged 73. He was a late town clerk of Hastings.

## MR. G. N. MIRAMS

Mr. George Nettleton Mirams, solicitor, of Birmingham, died recently, aged 77. He was admitted in 1901.

## MR. T. C. NEWMAN

Mr. Trevor Clyde Newman, late Master of the Supreme Court, died on 21st April, aged 73.

## MR. W. C. RUNDLE

Mr. Wilfred Charles Rundle, retired solicitor, of Southsea, died on 22nd April, aged 86.

## MR. R. SANDFORD

Mr. Richard Sandford, solicitor, of Shrewsbury, the oldest practising solicitor in Shropshire, died on 23rd April, aged 91. He was clerk to Albrighton Magistrates and was admitted in 1887.

## MR. A. E. SLACK

Mr. Alvan Esmond Slack, the first full-time town clerk of Bridport from 1948 to 1954, died recently, aged 56. He was admitted in 1941.

## MR. W. J. WHITE

Mr. William James White, managing clerk to Messrs. Gamlen, Bowerman & Forward, solicitors, of Lincoln's Inn, W.C.2, died on 4th April, aged 79. He had been with that firm for sixty-three years.

## MR. S. H. WILLAN

Mr. Simon Hunter Willan, solicitor, of Hawes, Yorkshire, has died at the age of 85. Admitted in 1893, he was appointed Registrar of Pontefract County Court in 1926 and later Registrar of Barnsley County Court also.

## SOCIETIES

The UNION SOCIETY OF LONDON announce the following subjects for debate in May: Wednesday, 11th: "That this House condemns Colonialism"; Wednesday, 18th: "That this House will vote Conservative"; Wednesday, 25th: No meeting. The next meeting will be held on 8th June.

Meetings are held in the Common Room, Gray's Inn, at 8 p.m.

Among the guests at the golden jubilee dinner of the DERBY LAW STUDENTS SOCIETY held recently were Councillor Alec Ling, Mayor of Derby, Mr. Elliot Gorst, Q.C., and Mr. Richard O'Sullivan, Q.C., Recorder of Derby.

## "THE SOLICITORS' JOURNAL"

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